

# ADMINISTRATIVE RULES OF SOUTH DAKOTA

## DEPARTMENT OF HUMAN SERVICES

### Article

- 46:10        ~~Developmental disabilities services, Repealed.~~
- 46:11        ~~Adjustment training centers~~ Developmental Disabilities.
- 46:12        ~~Advocacy services, Repealed.~~
- 46:13        ~~Medication administration, Repealed.~~

### ARTICLE 46:11

#### ~~ADJUSTMENT TRAINING CENTERS~~

#### DEVELOPMENTAL DISABILITIES

### Chapter

- 46:11:01     General provisions.
- 46:11:02     Certification requirements.
- 46:11:03     Rights of ~~consumers~~ participants.
- 46:11:04     Administrative requirements.
- 46:11:05     Service standards.
- 46:11:06     Safety, sanitation, and physical facilities standards.
- 46:11:07     Heath care services.
- 46:11:08     CHOICES waiver services.
- 46:11:09     Family support waiver services.
- 46:11:10     Family support services.
- 46:11:11     Community training services.

46:11:12        Respite care services.

46:11:13        Preadmission screening and resident reviews.

## **CHAPTER 46:11:01**

### **GENERAL PROVISIONS**

#### Section

46:11:01:01    Definitions.

46:11:01:02    Certification needed for receipt of government funds.

**46:11:01:01. Definitions.** Terms used in this article mean:

~~(1)"ACD 1990 standards," the Accreditation Council Standards and Interpretation Guidelines for Services for People with Developmental Disabilities, 1990 edition;~~

~~(2)"Adjustment training center," "ATC," a facility as defined in SDCL 27B-1-17(1) which is certified by the department pursuant to this article to provide prevocational or vocational training, residential training, and other supports and services as needed by consumers; a cooperative educational service unit or a residential school program that is accredited by the Division of Education Services and Resources as a residential school program as defined in subdivision 24:05:13:01(17) and approved by the department as a mental health center under chapter 46:20:03;~~

~~(3)"Aversive conditioning," the application, contingent upon the exhibition of a maladaptive behavior, of extremely unpleasant, startling, or painful stimuli that have a potentially noxious effect;~~

(1)"Advocate," any individual designated by a participant to support that participant by speaking or acting on the participant's behalf;

~~(4)(2)~~ "Certification," the department decision following procedures in chapter 46:11:02 which entitles an ~~adjustment training center~~ organization to receive government funds and provide services to ~~consumers~~ participants;

(3) "Chemical intervention," any medication used for the purpose of managing a participant's behavior;

(4) "Community support provider" or "CSP," a nonprofit facility as defined in SDCL subdivision 27B-1-17(4);

(5) "Conservator," as defined in SDCL subdivision 29A-5-102(2);

~~(6) "Consumer," a person with developmental disabilities;~~

~~(7) ——"Cooperative special educational unit," a unit created by two or more school districts by entering into an agreement pursuant to SDCL 13-5-31 to provide one or more education services to the participating districts;~~

~~(8) "Deficiency," a determination by the division that a facility is in less than full compliance with a given requirement;~~

~~(8)(6)~~ "Department," the Department of Human Services;

~~(9)(7)~~ "Developmental disability," a disability as defined by SDCL 27B-1-18;

~~(10) "Discharge," the planned cessation of services to a consumer when initiated at consumer's request or when agreed upon by the consumer's service team;~~

~~(11)(8)~~ "Division," the Division of Developmental Disabilities, a division of the Department of Human Services;

(9) "Family" a person or a group of people who are related to the participant by blood, marriage, or adoption, or as defined by the participant as a family based upon bonds of affection. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do

not depend on the existence of an economic relationship and the relationship is expected to endure over time;

~~(12)(10) "Group home," a congregate residential facility, other than a supervised apartment, for individuals with developmental disabilities which is certified by the department according to chapter 46:11:02 to provide residential services, training in skills needed for independent living, recreational activities, and basic supervision for individuals with developmental disabilities;~~

~~(13) "Intermediate care facility for the mentally retarded, under 16 bed capacity," or "ICF/MR-," a group home for not more than 15 consumers and an ATC, both certified by the department pursuant to article 46:11, also certified by the Department of Social Services, Office of Medical Services, and the Department of Health as an ICF/MR 15 capable of providing health-related services to consumers;~~

(11) "Guardian," as defined in subdivision 29A-5-102(4);

(12) "Individualized service plan" or "ISP," a single plan for the provision of services and supports to the participant that is person centered, directed by the participant, oriented around personal outcomes measures, and is intended to specify all needed assessments, supports, and training;

(13) "ISP team," a team composed of the service coordinator, the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and anyone else the participant desires;

(14) "Mechanical intervention," any device used for the purpose of restricting movement by the participant;

(15) "National quality assurance organization," a national accrediting organization approved by the division;

~~(14)~~(16) "Organization," an administrative and functional structure such as a business;

(17) "Organized health care delivery system" or "OHCDS," a certified CSP designated by the department that provides at least one waiver service directly to participants using the CSP's employees;

(18) "Participant," a person receiving services or supports under the provisions of this article;

~~(15)~~(19) "Physical ~~restraint-intervention~~," the ~~manual methods or mechanical devices~~ that are intended to restrict the movement of a ~~portion of an individual's body~~ participant;

(20) "Plan of correction," a plan to correct deficiencies identified as a result of an investigation of incident(s) or event(s) by the division that have placed or have the immediate potential to place a participant or participants health and safety in jeopardy.

(21) "Plan of enhancement," a plan to improve deficiencies identified by the division as a result of the division's review of a CSP's compliance with this article.

(22) "Problem behavior" A problem behavior is one which requires the attention of others in the person's environment because the behavior must be stopped or minimized. A problem behavior is something you feel compelled to address, stop, prevent or redirect. A problem behavior interferes with a person's everyday activities.

~~(16) "Service plan," a plan developed by the individual and the individual's service team that designates the services and supports needed by the individual;~~

~~(17) "Service team," or "team," the group of people, including the consumer, responsible for assisting the consumer in identifying personal goals and for designing a service plan to assist the consumer to accomplish those goals;~~

~~(18)~~ (23) "Termination," the imminent cessation of ~~ATC~~ CSP services to a ~~consumer~~ participant because of the inability of the ~~ATC~~ CSP to address the ~~consumer's~~ participant's needs;

~~(19) "Title XIX," of the Social Security Act, enacted in 1965 and as amended December 20, 1995.~~

**Source:** 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:01:02. Certification needed for receipt of government funds.** ~~An ATC that is not certified by the department pursuant to chapter 46:11:02 may not use federal, state, county, or municipal funds.~~ An organization must be certified by the division in order to receive funds for services identified in 46:11.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27A-5-9, 27B-2-26.

## **CHAPTER 46:11:02 CERTIFICATION REQUIREMENTS**

### Section

46:11:02:01 ~~Scope, Repealed.~~

46:11:02:02 Certified agencies.

46:11:02:03 ~~Compliance with life quality review, Repealed.~~

46:11:02:03.01 ~~Life quality review, Repealed.~~

46:11:02:03.02 ~~Life quality review certification criteria, Repealed.~~

46:11:02:03.03 ~~Life quality review sample selection, Repealed.~~

- 46:11:02:03.04 ~~Life quality review plan of enhancement, Repealed.~~
- 46:11:02:04 ~~Division visits, Transferred.~~
- 46:11:02:05 ~~Initial certification~~ Application requirements.
- 46:11:02:06 Provisional certification.
- 46:11:02:07 Certification requirements.
- 46:11:02:08 Certification periods.
- 46:11:02:09 ~~Survey~~ Biennial review for compliance with rules.
- 46:11:02:10 Statement of ~~deficiencies~~ any deficiency and ~~plans of correction~~ plan of enhancement.
- 46:11:02:11 ~~Continuation of ATC certification, Repealed.~~
- 46:11:02:12 Probation.
- 46:11:02:13 Probation procedures.
- 46:11:02:14 Revocation of certification.
- 46:11:02:15 Procedure for revocation of certification.
- 46:11:02:16 Revocation of certification -- Services to ~~consumers~~ participants.
- 46:11:02:17 ~~Statement of deficiencies and plan of correction — Probation, Repealed.~~
- 46:11:02:18 ~~Documentation of certification, Repealed.~~
- 46:11:02:18.01 Division visits.
- 46:11:02:19 Appeal procedure.
- 46:11:02:20 Time and place of hearing -- Time extension.

**46:11:02:01. Scope.** ~~This chapter specifies the minimum requirements for an ATC to accept government funds under the provisions of § 46:11:01:02. An ATC must be certified under the terms of this article and article 46:13 to enter into contracts with the department under chapter 67:54:03, chapter 67:54:04, or chapter 46:10:01 Repealed.~~

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:02. Certified agencies.** The ~~certification~~ provider requirements in this chapter apply to ~~ATCs~~ CSPs. A CSP providing services under the provisions of this article must meet the following criteria:

- (1) Be certified as a CSP under the provisions of this article;
- (2) Have a signed provider agreement with the division;
- (3) Have a signed provider agreement with the Department of Social Services; and
- (4) Be accredited by a national quality assurance organization.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:03. Compliance with life quality review.** ~~The division shall use surveys to determine each ATC's compliance with the Life Quality Review as defined in § 46:11:02:03.01. If an ATC fails to demonstrate compliance with the Life Quality Review certification criteria as defined in § 46:11:02:03.02, the division shall place the ATC on probation. The division shall schedule another survey within one year, at which time the ATC must either demonstrate compliance with the Life Quality Review Certification criteria as defined in § 46:11:02:03.02 or lose certification under this article. The division may grant certification extensions of up to three months to accommodate survey scheduling delays~~ Repealed.



**Source:** 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:03.01. Life quality review.** ~~The life quality review assesses outcomes in the areas of choice, relationships, lifestyle, health and well being, rights, and satisfaction. Outcomes are applied on an individual basis for each consumer in the ATC's sample. All applicable considerations must be met for the outcome to be met for the consumer. Considerations that do not apply to the consumer are deemed as being met for the consumer~~ Repealed.

**Source:** 24 SDR 190, effective July 16, 1998; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:03.02. Life quality review certification criteria.** ~~Certification criteria consists of each outcome being present for a minimum of two thirds of each ATC's sample in order for the outcome to be considered met by the ATC. At least 17 of the total 25 outcomes must be met in order for the ATC to meet certification criteria~~ Repealed.

**Source:** 24 SDR 190, effective July 16, 1998; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:03.03. Life quality review sample selection.** Each ATC's sample size is based on the total number of consumers served. ~~The division will select two thirds of the sample and the ATC will select one third of the sample~~ Repealed.

**Source:** 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:03.04. Life quality review plan of enhancement.** ~~Within 30 calendar days following the division's life quality review, the division shall send to the ATC a report that identifies the outcomes not met. Within 30 calendar days after the receipt of the report, the ATC must submit a plan of enhancement that shall specify the actions to be taken and the date of completion. Within 30 calendar days after the receipt of the plan, the division shall notify the ATC in writing regarding the approval of the plan~~ Repealed.

**Source:** 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:04. Division visits.** ~~The division may survey an ATC at any given time without prior notice for the purposes of verifying the ATC's compliance with this article. The ATC must grant the division access to all facilities, activities, and records necessary to determine compliance. The division may visit each ATC one year after the survey required by § 46:11:02:09 to assess the ATC's progress on its plan of correction as specified in § 46:11:02:10. At the discretion of the secretary, the division may survey an ATC at any given time to determine compliance with one or more of the following: ACD 1990 standards, article~~

46:13, and articles 46:11. The ATC shall address any substantial deficiencies discovered as a result of a division survey through a plan of correction Transferred to § 46:11:02:18.01.

**Source:** ~~22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.~~

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**Reference:** ~~The Accreditation Council Standards and Interpretation Guidelines for Services for People with Developmental Disabilities, 1990 edition, The Accreditation Council on Services for People with Disabilities. Copies may be obtained from the Accreditation Council on Services for People with Disabilities, 100 West Road, Suite 406, Towson, MD 21204. Cost: \$35.00.~~

**46:11:02:05. Initial certification Application requirements.** ~~The department may grant initial certification to organizations not certified under this article if they meet the following requirements~~ Any organization seeking certification by the department must provide the following to the division:

(1) ~~The organization submits a~~ A written request statement requesting certification by the ~~to the department;~~

(2) ~~The organization has~~ A copy of the ~~filed~~ articles of incorporation and nonprofit status filed with the secretary of state ~~and submits a copy of each to the department;~~

(3) ~~The organization has bylaws which are~~ A copy of the organization's bylaws approved by its board of directors ~~and submits a copy to the department; and~~

(4) ~~The organization submits~~ A copy of the organization's policies ~~to the department~~ that meet the requirements of this article.;

(5) A copy of the organization's insurance policy as required in § 46:11:04:07; and

(6) A copy of the organization's medication administration curriculum.

The organization may receive provisional certification ~~as in~~ pursuant to § 46:11:02:06 upon the department's approval ~~of initial certification requirements~~.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:06. Provisional certification.** ~~The organization may shall provide services to consumers when provisional certification is received. The provisional certificate is effective for no more than six months. The division shall survey the organization within that six months using the ACD 1990 standards, this article, and article 46:13. The department shall grant the organization certification for two years as an ATC if the organization complies with 75 percent or more of the ACD's applicable standards and 100 percent with the requirements of this article and article 46:13. If the requirements for a two-year certification are not achieved, the department may either extend the organization's provisional status by three months or place the organization on probation. To obtain provisional certification an organization shall meet the requirements in §46:11:02:05. The provisional certification is effective for no more than two years. The organization shall:~~

(1) Have a signed provider agreement with the department and a signed provider agreement with the Department of Social Services;

(2) Provide at least one service listed in §67:54:04:14 to participants; and

(3) Be reviewed pursuant to §46:11:02:09 and be accredited by a national quality assurance organization prior to the expiration of the provisional certification.

If the requirements for a two-year certification are not achieved, the department may extend the organization's provisional status by three months and conduct a second review. If the division determines the organization will not meet provisional certification requirements, the division shall obtain services for participants within three months of that determination.

If the organization completes the provisional certification requirements in this section the organization shall be certified as a CSP pursuant to §46:11:02:07.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** Covered services, § 67:54:04:14.

**46:11:02:07. Certification requirements.** ~~To be certified~~ When a CSP meets the requirements pursuant to §§46:11:01 to 46:11:08, inclusive and §46:11:11, the division shall issue a certificate. ~~under this article, an ATC must:~~

- ~~(1) Meet the requirements of chapters 46:11:02 to 46:11:06, inclusive;~~
- ~~(2) Assure the health and safety of the consumers receiving services under chapter 46:11:06;~~
- ~~(3) Meet the requirements of article 46:13; and~~
- ~~(4) Be surveyed by the division and found to be in compliance with the life quality review.~~

**Source:** 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:08. Certification periods.** ~~Certified ATCs must demonstrate that they meet the requirements of § 46:11:02:07 at least every two years.~~ Certification is in effect for two years from the date it is granted unless it is extended or revoked by the department due to deficiencies relating to this article. The certification may be extended until the biennial review is completed but not more than 90 calendar days.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:09. Survey Biennial review for compliance with rules.** ~~The division shall survey each ATC to determine compliance with the requirements of chapters 46:11:03 to 46:11:06, inclusive, and article 46:13. The division shall inspect practices and services provided for a minimum of two consumers. The division shall provide the ATC with a statement of deficiencies, if any, following the survey. The division shall cite unavailability during a survey of documentation which is required by articles 46:11 and 46:13 as deficiencies. A biennial review shall be conducted by the division to determine compliance with the requirements in §§46:11:01 to 46:11:08, inclusive and §46:11:11. This review will include any services and operations of the CSP and any subcontractor. The review shall include a representative random sample of participants.~~

A fiscal review by the department's Division of Budget and Finance shall be completed within the same review period.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:10. Statement of ~~deficiencies~~ any deficiency and ~~plans~~ plan of ~~correction~~ enhancement.** ~~Within 30 calendar days following the division's survey, the division shall send a statement of deficiencies to the ATC. A statement of deficiencies shall be provided to the CSP when the division determines that the CSP is in less than full compliance with a given requirement.~~

Within ~~30~~ 15 calendar days after the receipt of the statement of deficiencies, the ~~ATC~~ CSP must submit a plan of ~~correction~~ enhancement for each deficiency including those identified in the fiscal review which specifies the measures to be taken and the date of completion for each ~~plan~~ deficiency. If the plan of ~~correction~~ enhancement is not received by the division within ~~30~~ 15 calendar days, the division shall notify the ~~ATC~~ CSP in writing that the ~~ATC's~~ CSP's certification will be revoked in 15 calendar days unless the plan is received by the ~~department~~ division.

Within ~~30~~ 15 calendar days after the receipt of the plan of ~~correction~~ enhancement, the division shall notify the ~~ATC~~ CSP in writing of its decision regarding the approval of the plan of ~~correction~~ enhancement and the certification of the ~~ATC~~ CSP. ~~The ATC shall be in full compliance with the requirements of chapters 46:11:03 to 46:11:06, inclusive, and article 46:13. Each ATC's certification shall be effective for two years from the date the plan of correction is approved.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:11. Continuation of ATC certification.** ~~The department may grant two year certification if an ATC has deficiencies relating to this article. The ATC must document substantial improvement through the plan of correction and demonstrate the ability and commitment to correct the remaining deficiencies by designated dates as agreed upon by the ATC and division. Certification is in effect for two years from the date it is granted unless it is extended or revoked by the department~~ Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:12. Probation.** ~~The division may impose probation, not to exceed one year, if an ATC has deficiencies in several areas in this article which seriously affect the health, safety, welfare, rights, or habilitation of the consumers or the ATC has failed over time to comply with this article. The division shall send a statement of deficiencies to an ATC placed on probation, and the ATC shall develop a plan of correction according to § 46:11:02:17. While on probation, the ATC must submit monthly reports to the division which document progress made towards completion of the plan of correction. The division shall conduct site visits at least every three months while an ATC is on probation. If the division obtains evidence of abuse, neglect, or exploitation of a consumer served by an ATC, the division may place an ATC immediately on probation unless the situation is rectified immediately to the satisfaction of the division. The division may not provide additional funds to an ATC on probation which would permit that ATC to provide services to additional consumers. The division may not approve requests to serve new consumers with existing funding from an ATC on probation.~~ The division may impose



probation, not to exceed one year if the CSP fails to demonstrate substantial compliance with the requirements in §§46:11:01 to 46:11:08, inclusive and §46:11:11.

A CSP may not accept new participants while on probation, unless approved by the division.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:13. Probation procedures.** ~~When the division determines that it has sufficient evidence to place an ATC on probation, the division shall send the ATC written notice within five calendar days after the determination. The division shall implement a plan of correction pursuant to § 46:11:02:17. The division shall schedule a survey within 12 months after the date of placement on probation to determine the ATC's compliance with the plan of correction and to determine whether to continue or revoke the ATC's certification.~~ When the division places a CSP on probation, the following actions shall occur:

(1) The division shall send the CSP written notice of probationary status and a statement of deficiencies within 5 calendar days of the determination;

(2) The CSP must develop and submit a plan of correction for each deficiency, which specifies the measures to be taken and the date of completion, within 15 calendar days of receipt of notice;

(3) The division may revoke the CSP's certification if the plan of correction is not received by the fifteen calendar day deadline. Prior to revocation of certification the division shall provide the CSP written notification, within five calendar days after the due date of the plan of

correction. The notification shall state the CSP's certification will be revoked in ten calendar days if the plan of correction is not received;

(4) The division shall notify the CSP within 15 calendar days of its decision regarding approval of the plan of correction;

(5) The division shall conduct site visits at least every three months while a CSP is on probation;

(6) The CSP shall submit monthly reports to the division which document progress made towards completion of the plan of correction; and

(7) The division shall schedule a review prior to the end of 12 months from the date the CSP was placed on probation to determine the CSP's compliance.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:14. Revocation of certification.** ~~If the ATC's deficiencies as indicated in the plan of correction are not completed by agreed dates or pursuant to § 46:11:02:03, the department may revoke its certification. The department may also revoke an ATC's certification on any of the following grounds:~~ The department may revoke a CSP's certification if the CSP fails to meet the requirements of this article, or if the division finds any of the following:

(1) Permitting, aiding, or abetting the commission of any unlawful act;

(2) ~~Conduct~~ Engaging in any practices ~~of practices detrimental to the welfare of consumers which affects the health, safety, welfare, rights, or habilitation of the participants served; or~~

(3) Failure to comply with all licensing and other standards required by federal, ~~state, county, city, or tribal statute, rule, or ordinance~~ or state laws, rules, or regulations which affects the health, safety, welfare, rights, or habilitation of the participants ~~that result in practices which are detrimental to the welfare of the consumer;~~

(4) Falsifying information provided to the division for certification or funding purposes or failing to comply with billing procedures as outlined by the department contract;

(5) Participating in, condoning, permitting, aiding, abetting, or being associated with fraud, deceit, coercion, misrepresentation, or any unethical acts, by the CSP, its personnel, or governing body; or

(6) Fails to fulfill conditions of probation.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:15. Procedure for revocation of certification.** The department shall notify the ~~ATC~~ CSP in writing within five calendar days of its determination to revoke certification. This notice shall contain: ~~the reasons for determination as in § 46:11:02:14, the opportunity for the ATC to request an informal reconsideration by the department, and an opportunity for the ATC to request an evidentiary hearing and due process as in SDCL chapter 1-26. The ATC shall submit a written response to the department within five calendar days of receipt of notice.~~

(1) The reason for the determination pursuant to § 46:11:02:14;

(2) The opportunity for the CSP to request an informal reconsideration by the department;  
and

(3) The opportunity for the CSP to request an evidentiary hearing and due process pursuant to SDCL chapter 1-26.

The CSP shall submit a written response to the department within ten calendar days of receipt of notice.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:16. Revocation of certification -- Services to ~~e~~consumers participants.** The ~~department~~ division shall develop and implement a plan for maintaining services to ~~e~~consumers participants upon the revocation of ~~an ATC's~~ a CSP's certification.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:02:17. Statement of deficiencies and plan of correction -- Probation.** ~~Within 15 calendar days following the division's placement of an ATC on probation, the division shall send to the ATC a statement of deficiencies. Within 15 calendar days after the receipt of the statement of deficiencies, the ATC must submit to the division a plan of correction for each deficiency which specifies the measures to be taken and the date of completion for each measure. If the plan of correction is not received within established deadlines, the division shall notify the ATC in writing within five calendar days that the ATC's certification will be revoked in 10 calendar~~

days. Within 15 calendar days after the receipt of the plan of correction, the division shall notify the ATC in writing of its decision regarding the approval of the plan of correction Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:02:18. Documentation of certification.** ~~The department shall issue documentation of certification to the ATCs following the survey required by § 46:11:02:09. The documentation shall indicate the time period for certification as indicated in § 46:11:02:10 Repealed.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26.~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

~~**46:11:02:04**~~ **46:11:02:18.01. Division visits.** The division may survey review an ATC a CSP at any given time without prior notice for the purposes of verifying the ATC's CSP's compliance with this article and chapter 67:54:04. The ATC CSP must grant the division access to all facilities, activities, and records necessary to determine compliance. ~~The division may visit each ATC one year after the survey required by § 46:11:02:09 to assess the ATC's progress on its plan of correction as specified in § 46:11:02:10. At the discretion of the secretary, the division may survey an ATC at any given time to determine compliance with one or more of the following: ACD 1990 standards, article 46:13, and articles 46:11. The ATC shall address any substantial deficiencies discovered as a result of a division survey through a plan of correction.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000; transferred from § 46:11:02:04.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**Reference:** ~~The Accreditation Council Standards and Interpretation Guidelines for Services for People with Developmental Disabilities~~, 1990 edition, The Accreditation Council on Services for People with Disabilities. ~~Copies may be obtained from the Accreditation Council on Services for People with Disabilities, 100 West Road, Suite 406, Towson, MD 21204. Cost: \$35.00.~~

**46:11:02:19. Appeal procedure.** ~~An ATC may appeal to the secretary of the department the denial of certification, the revocation of certification, or probationary certification~~ If the CSP is placed on probation or its certification or application for certification is denied, suspended, or revoked, the CSP may appeal to the cabinet secretary of the department. The CSP shall notify by ~~notifying~~ the department by certified mail within ten calendar days of receipt of notification of the action and requesting a fair hearing pursuant to SDCL chapter 1-26.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000

**General Authority:** SDCL 27B-2-25, 27B-2-26.

**Law Implemented:** SDCL 27B-2-25, 27B-2-26.

**46:11:02:20. Time and place of hearing -- Time extension.** A fair hearing by an impartial hearing officer shall be held within 90 days after ~~receipt for a request by the appellant~~ the department receives a request by the CSP. The ~~impartial~~ hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. ~~Time extensions may be provided~~

by the impartial hearing officer or at the request of any of the parties involved and upon agreement of both parties to a specific extension of time. The hearing officer may continue the hearing at the request of any parties involved and upon agreement by the parties to a specific extension of time.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000

**General Authority:** SDCL 27B-2-25, 27B-2-26.

**Law Implemented:** SDCL 27B-2-25, 27B-2-26.

## CHAPTER 46:11:03

### RIGHTS OF ~~CONSUMERS~~ PARTICIPANTS

#### Section

46:11:03:00 Participant's rights.

46:11:03:01 ~~ATC~~ CSP policy on abuse, neglect, and exploitation.

46:11:03:02 ~~Incident~~ Critical incident reports -- Submission to the division.

46:11:03:03 ~~Termination of services~~ Notification.

46:11:03:04 ~~Appeal of termination or ineligibility.~~

46:11:03:04.01 ~~Time and place of hearing~~ Time extension.

~~46:11:03:05 Discharge summaries.~~

46:11:03:06 Procedures for grievances.

46:11:03:07 ~~Denial of services~~ Appeal, Repealed.

46:11:03:08 Rights restriction -- Due process.

46:11:03:09 Emergency rights restriction.

46:11:03:10 Restoration plans.

46:11:03:11 Release of information.

- 46:11:03:00. Participant's rights.** A participant has rights guaranteed under the constitution and laws of the United States and the state including:
- (1) To be free from abuse, neglect, and exploitation;
  - (2) To have privacy, dignity, confidentiality, and humane care;
  - (3) To be able to communicate in private;
  - (4) To be able to communicate in the participant's primary language or primary mode of communication;
  - (5) To be free from retaliation for making a complaint, voicing a grievance, recommending changes in policies, or exercising a legal right;
  - (6) To be able to maintain contact with family and friends, unless contact has been legally restricted;
  - (7) To be able to refuse or discontinue services;
  - (8) To have access to, read, and challenge any information contained in the participant's record;
  - (9) To have access to an advocate as defined in subdivision 46:11:01:02 (1) or an employee of the state's designated protection and advocacy system;
  - (10) To be provided a list of all CSPs and Home and Community Based Services; and
  - (11) To be informed of the CSP's grievance procedures pursuant to § 46:11:03:06.

The CSP shall provide the participant a document describing the participant's rights in an accessible format and if necessary shall provide training on those rights. This document and training shall be provided upon admittance to the CSP and annually thereafter.

**Source:**

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26(4)(9).



**46:11:03:01. ~~ATC~~ CSP policy on abuse, neglect, and exploitation.** ~~An ATC~~ A CSP ~~must~~ shall have a policy approved by the division which prohibits abuse, neglect, and exploitation of a ~~consumer~~ participant. The policy must contain the following:

- (1) Definitions of abuse, neglect, and exploitation pursuant to SDCL 22-46-1;
- (2) A ~~requirement~~ procedure to report to the division pursuant to § 46:11:03:02;
- (3) A ~~requirement~~ procedure to report to the Department of Social Services pursuant to SDCL 22-46, 26-8A-3 to 26-8A-8, inclusive;

- (4) A procedure for an internal investigation that includes:
  - (a) Initiation of the investigation within 48 hours or the next business day whichever is later;
  - (b) Issuance of preliminary investigation findings to the division within seven calendar days of initiation of the investigation;
  - (c) Issuance of the final investigation findings to the division within 30 calendar days of initiation of the investigation;

- (5) A procedure for remediation to ensure health and safety of participants;
- ~~(4)~~(6) A procedure for disciplinary action to be taken if staff have engaged in abusive, neglectful, or exploitative ~~behavior~~ activities;

- ~~(5)~~(7) A procedure to inform the guardian, the parent if the ~~consumer~~ participant is a ~~minor~~ under 18 years of age, and the ~~consumer's~~ participant's advocate, if any, of the alleged incident or allegation and any information not otherwise prohibited by court order about any action taken within 24 hours after the incident or allegation, unless the person is accused of the alleged incident;

- ~~(6)~~(8) Upon substantiating the ~~incident~~, ~~a requirement to~~ allegation, a procedure to communicate investigation results to the participant, to the participant's parent if the participant

is under 18 years of age, or to the participant's guardian or advocate, if any. The CSP shall document the actions to be implemented to reduce the likelihood of ~~or~~ and prevent repeated incidents of abuse, neglect, or exploitation;

(9) A procedure for training the participant, the guardian or the participant's advocate, if any, and any family members as identified by the participant, upon admission and annually thereafter, on how to report to the CSP and division any allegation of abuse, neglect, or exploitation. The CSP shall document the date, time, and content of this training;

(10) A requirement that the training include what actions may be taken by the participant, the guardian or the participant's advocate, if any, when not satisfied with the action taken or the outcome;

(11) A requirement that the training shall be provided in an accessible format; and

(12) A requirement that retaliation against a participant, the participant's parent if the participant is under 18 years of age, the participant's guardian or advocate, if any, is forbidden. Retaliation is also forbidden against a whistle blower pursuant to SDCL 27B-8-43.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**References:** Reports of child abuse, SDCL 26-8A-3 to 26-8A-10, inclusive.

**46:11:03:02. Incident Critical incident reports -- Submission to division.** ~~The ATC must submit an incident report and the form, DHS DD 708, furnished by the division for any unusual accident or injury involving a consumer receiving services. The ATC shall give verbal notice or a facsimile of the incident to the division within 48 hours or the next working day, whichever occurs first, once the ATC becomes aware of the incident. The ATC shall submit a~~

~~written incident report to the division within seven calendar days after the verbal notice. A report must be submitted in the following instances:~~ The CSP shall give verbal notice of any critical incident involving a participant to the division no later than the end of the division's next business day or the CSP's administrative business day whichever occurs first from the time the CSP becomes aware of the incident. The CSP shall submit a written critical incident report utilizing the division's on-line reporting system within seven calendar days after the initial notice is made. A report must be submitted for the following:

- (1) Deaths;
- (2) Life-threatening illnesses or injuries, ~~whether hospitalization occurs or not;~~
- (3) Alleged instances of abuse, neglect, or exploitation against or by ~~consumers~~ any participant;
- (4) Changes in health or behavior that may jeopardize continued services;
- (5) Serious medication errors. ~~A serious medication error is the inappropriate administration of a medication to the consumer by an ATC that results in emergency medical treatment by a physician or physician's assistant, hospitalization, or death;~~
- (6) Illnesses or injuries that resulted from unsafe or unsanitary conditions; and
- (7) Any illegal activity ~~that involves~~ involving a consumer ~~The report must contain a description of the incident, specifying what happened, when it happened, and where it happened. The report must be dated and signed by the individual making the report.~~ participant;
- (8) Any use of physical, mechanical, or chemical intervention, not part of an approved plan;
- (9) Any bruise or injury resulting from the use of a physical, mechanical, or chemical intervention;
- (10) Any diagnosed case of a reportable communicable disease involving a participant; or
- (11) Any other critical incident as required by the division.

The report must contain a description of the incident, specifying what happened, when it happened, and where it happened. The report shall also include any action taken by the CSP necessary to ensure the participant's safety and the safety of others and any preventative measures taken by the CSP to reduce the likelihood of similar incidents occurring in the future. The division may request further information or follow-up related to the critical incident.

The CSP shall notify the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, that a critical incident report has been submitted and the reason why unless the parent or guardian is accused of the incident.

**Source:** 22 SDR 104, effective February 13, 1996; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**Cross reference:** Communicable disease control, chapter 44:20.

**46:11:03:03. Termination of services – Notification.** ~~At least 30 calendar days before an ATC terminates services to a consumer, the ATC must provide notice of its intention to the division. The notice must specify the ATC's reasons for the action, as well as the ATC's appeal process. The ATC may not terminate services to a consumer without cause. The ATC must counsel the consumer, the consumer's parent if the consumer is under 18 years of age, or the consumer's guardian regarding the availability of other services in the community and the consumer's right to appeal the decision to the division. The termination may be against the desires of the consumer and the consumer's parent or guardian. The ATC must have a policy that addresses notice of termination of services. Notice must be provided at least 30 calendar days prior to termination to the following:~~

~~(1) The consumer, with accommodations made for people who have difficulties communicating;~~

~~(2) The consumer's parent if the consumer is under 18 years of age;~~

~~(3) The consumer's guardian;~~

~~(4) All of the consumer's service team members; and~~

~~(5) The division.~~

~~**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.~~

~~**General Authority:** SDCL 27B-2-26(4).~~

~~**Law Implemented:** SDCL 27B-2-26.~~

~~**Cross-Reference:** Service team—Composition and meetings, § 46:11:05:01.~~

**46:11:03:04. Appeal of termination or ineligibility.** ~~A consumer, a consumer's parent, if the consumer is under 18 years of age, or a consumer's guardian may appeal an ATC's decision regarding ineligibility or termination of services to the division. An appeal shall be made in writing to the division within 30 days after receipt of the notice regarding termination or ineligibility. The division shall provide a determination within 30 days of receipt of request for appeal. The consumer may request assistance with the appeal process from an advocate and must be provided the opportunity to obtain one. A consumer, a consumer's parent if the consumer is under 18 years of age, or a consumer's guardian dissatisfied with the division's determination regarding eligibility or termination of services may request a fair hearing by notifying the department within 30 days of receipt of the decision by the division. When a termination is being appealed, the consumer shall continue receiving services from the ATC until a decision is reached after a hearing pursuant to SDCL chapter 1-26.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25, 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26.

**Cross reference:** Fair hearings, chapter 67:17:02.

**46:11:03:04.01. Time and place of hearing -- Time extension.** ~~A fair hearing by an impartial hearing officer shall be held within 90 days after receipt for a request by the appellant. The impartial hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. Time extensions may be provided by the impartial hearing officer or at the request of any of the parties involved and upon agreement of both parties to a specific extension of time.~~

~~**Source:** 27 SDR 63, effective December 31, 2000.~~

~~**General Authority:** SDCL 27B-2-25.~~

~~**Law Implemented:** SDCL 27B-2-25.~~

**46:11:03:05. Discharge summaries.** ~~The ATC must inform the division of each discharge no later than the end of the following work day on a form, DHS-DD-708, provided by the division. Within 30 calendar days after the discharge or termination of a consumer, the ATC must send a copy of the consumer's discharge summary, DHS-DD-750, to the following:~~

- ~~(1) The division;~~
- ~~(2) The consumer;~~
- ~~(3) The guardian;~~
- ~~(4) The consumer's advocate; and~~
- ~~(5) The consumer's parent if the consumer is under 18 years of age.~~

~~Source: 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.~~

~~General Authority: SDCL 27B-2-26(4).~~

~~Law Implemented: SDCL 27B-2-26.~~

~~46:11:03:06. Procedures for grievances. Each ATC must have written grievance policies and procedures approved by the division whereby a consumer, a consumer's parent if the consumer is under 18 years of age, or a consumer's guardian may appeal any decision or action by the ATC that affects the consumer. An ATC may not process a grievance until a consumer has the opportunity to obtain an advocate if so desired. Advocates may not represent a consumer in a grievance procedure unless requested by that consumer and with that consumer present. The ATC must ensure that assistance is provided for those who do not understand the grievance procedures.~~

~~The ATC shall inform the consumer, the consumer's parent if the consumer is under 18 years of age, the consumer's guardian, or the consumer's advocate in writing or in an accessible format of the grievance procedure at the time of application and at least annually thereafter.~~

~~The procedure shall also include the ability to appeal the ATC's decision as provided in § 46:11:03:04 to the division.~~ Each CSP shall have a written procedure for grievances approved by the division. The grievance procedure shall include the following:

(1) A requirement that each participant, participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, be informed in writing or in an accessible format of the CSP's grievance procedure at the time of application and at least annually thereafter;

(2) A requirement that information is provided to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, in an accessible

format regarding the ability to appeal to the CSP any decision or action by the CSP that affects the participant;

(3) A requirement that information is provided to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, regarding the opportunity to obtain an advocate as defined in subdivision 46:11:01:01(1) or an employee of the state's designated protection and advocacy system. An advocate may not act on the participant's behalf without consent or knowledge by the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any. This does not apply to any employee of the state's designated protection and advocacy system when acting in the capacity of an investigative authority in accordance with 45 C. F. R. § 1386 Subpart B (2000). The CSP shall not process the grievance until the advocate is obtained if one is requested;

(4) A requirement that assistance is provided to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, if they do not understand the grievance procedures; and

(5) A requirement that each participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, is provided with information on how to contact the division.

The ~~ATC CSP~~ may not ~~restrict or deny services to consumers~~ retaliate against a participant who ~~utilize~~ utilizes the grievance procedures.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.



**46:11:03:07. Denial of services -- Appeal.** ~~The division shall deny an applicant funding for services if the applicant does not have a developmental disability as defined in SDCL 27B-1-18 § 67:54:04:05. The applicant may request a hearing within 30 days of receipt of the decision pursuant to SDCL chapter 1-26 Repealed.~~

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-25.~~

**Law Implemented:** ~~SDCL 27B-2-25.~~

**46:11:03:08. Rights restriction -- Due process.** The rights of the ~~consumer~~ participant may only be restricted to protect the ~~consumer~~ participant from endangering self or others or to provide specific services or supports as provided in SDCL 27B-8-52. Any restriction of rights shall promote the least restrictive alternative appropriate to meet the needs of the ~~consumer~~ participant and include a restoration plan as provided in 46:11:03:10.

Prior to restricting a ~~consumer's~~ participant's rights, the ATC CSP shall require the ~~consumer~~ participant, the ~~consumer's~~ participant's ISP team, and as applicable, the ~~consumer's~~ participant's parent, if the ~~consumer~~ participant is under 18 years of age, or the ~~consumer's~~ participant's guardian, to review and approve each restriction. The ATC's CSP's human rights committee shall act as an impartial party to review and approve or deny each restriction prior to implementation and at least annually thereafter.

~~If the consumer displays behavior that endangers self or others and requires an emergency rights restriction, the ATC shall notify the consumer's parent if the consumer is under 18 years of age or the legal guardian within 24 hours of implementation of the restriction.~~

The participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian or advocate, if any, shall be notified of the right to appeal any rights restriction through the CSP's grievance procedure.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25, 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26, 27B-8-52.

**46:11:03:09. Emergency rights restriction.** If the participant displays behavior that endangers self or others and requires an emergency rights restriction, the CSP shall notify the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, within 24 hours of implementation of the restriction.

A quorum pursuant to subdivision 46:11:05:14(7), of the CSP's human rights committee shall review and approve or disapprove any emergency rights restriction within 24 hours or the next business day of implementation. If the CSP's human rights committee denies the emergency rights restriction the ISP team shall identify and present alternative restrictions to the CSP's human rights committee. The full committee shall review and approve or disapprove the restriction at the next regularly scheduled meeting.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26, 27B-8-52.

**46:11:03:10. Restoration plans.** Restoration plans shall be developed and implemented when a participant's rights have been restricted. The participant and the participant's team shall develop a plan which shall include how the rights will be restored in part or in whole. The plan shall be reviewed as specified or at least annually by the participant or the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and by the human rights committee.

A restoration plan shall describe the rights that will be restored and shall be individualized, outcome-based, attainable, measurable, and time-limited.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26, 27B-8-52.

**46:11:03:11. Release of information.** Consent shall be obtained prior to releasing a participant's confidential information. The consent shall:

- (1) Be time limited;
- (2) Specify the information to be released;
- (3) Specify to whom the information will be released; and
- (4) Be signed by the participant, if applicable, or by the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26, 27B-8-52.

## CHAPTER 46:11:04

### ADMINISTRATIVE REQUIREMENTS

#### Section

- 46:11:04:01 ~~Adjustment training centers~~ CSPs to be nonprofit corporations.
- 46:11:04:02 Accounting systems ~~and cost reports,~~ cost reporting and annual audits.
- 46:11:04:03 ~~Annual audits,~~ Repealed.
- 46:11:04:04 Retention of records.
- 46:11:04:05 Policy for disposition of records if ~~ATC~~ CSP closes.
- 46:11:04:06 ~~Transfer of records to new governing body,~~ Repealed.
- 46:11:04:07 Insurance.
- 46:11:04:08 Determination of product and service charge.
- 46:11:04:09 ~~Protection~~ Confidentiality and protection of records.
- 46:11:04:10 ~~Administration of integrated and segregated residential services,~~ Repealed.
- 46:11:04:11 ~~Consumer~~ Participant information to be furnished to division.
- 46:11:04:12 Service agreement modification.
- 46:11:04:13 Management of personal finances.
- 46:11:04:14 ~~Adjustment training center~~ CSP bylaws.
- 46:11:04:15 Hours open.
- 46:11:04:15.01 Staff orientation training.
- 46:11:04:15.02 Employment screening.
- 46:11:04:16 ~~Confidentiality of information,~~ Repealed.

**46:11:04:01. ~~Adjustment training centers~~ CSPs to be nonprofit corporations. A CSP**  
ATCs must be a ~~nonprofit corporations~~ corporation incorporated according to SDCL chapters  
47-22 to 47-28, inclusive. ~~ATCs~~ The CSP must meet the definition for tax exemption status

according to § 501(c)(3) of Title 26 of the Internal Revenue Code, October 22, 1986, as in effect on December 20, 1995 the United States Internal Revenue code of 1986, as amended, and in effect on November 15, 2010.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**Note:** Internal Revenue Service Federal Tax Information and Notice Inquiries, 1-800-829-1040.

**46:11:04:02. Accounting systems ~~and cost reports~~, cost reporting and annual audits.**

~~The ATC must maintain an accounting system pursuant to generally accepted accounting practices as provided in §§ 20:37:11:07 and 20:37:11:08, which enables the ATC to clearly identify the cost of services and other expenses of operation. The ATC must submit a cost report as required by the department. The department shall furnish the format of the cost report. The~~  
CSP shall maintain an accounting system pursuant to Generally Accepted Accounting Principles (GAAP). If required by the department, the CSP must submit to the department a copy of an annual entity-wide, independent financial audit that shall be conducted by a certified public accountant who is not an employee of the CSP or a member of its board of directors. The audit shall be completed and filed with the department within the fourth month following the end of the CSP's reporting period.

Audits conducted in accordance with this section shall contain, as part of the supplementary information, a cost report as outlined by the department. If applicable, the audit shall be conducted in accordance with the Federal Office of Management and Budget (OMB) Circular A-133 by an auditor approved by the Auditor General to perform the audit.

For either an entity-wide, independent financial audit or an A-133 audit, the CSP shall assure resolution of all interim audit findings. The CSP shall facilitate and aid any such reviews, examinations, and agreed upon procedures the department or any contractor may perform.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**Reference: Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"**, June 27, 2003. Copies are available free of charge from the following web site: [www.whitehouse.gov/omb/circulars](http://www.whitehouse.gov/omb/circulars).

**46:11:04:03. Annual audits.** ~~The ATC must annually submit to the department a copy of an independent audit of its accounts conducted by a certified public accountant who is not an employee of the ATC or a member of its board of directors. The ATC shall make the report of the audit a part of the ATC's records. The ATC shall make a copy of the audit or annual financial report available to the public upon request. The ATC must assure resolution of all interim audit findings. If applicable, the audit must be in compliance with Federal Office of Management and Budget Circular A-133 dated June 30, 1997, as provided in the Single Audit Act of 1984, Pub. L. No. 98-502, and the Single Audit Act Amendment of 1996, Pub. L. No. 104-156. The ATC shall submit the audit for each fiscal year by November 15~~ Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(2).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**Reference:** Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations," dated June 30, 1997. Copies may be obtained from Office of Administration, Publications Office, New Executive Office Building, Room 2200, Washington, DC 20503, telephone (202) 395-7332. Cost: free.

**46:11:04:04. Retention of records.** The ATC CSP must ~~retain all financial records, individual service plans and progress summaries, and consumer data assembled for research purposes for at least six years. Each ATC must have a written procedure for destruction of records;~~ maintain records for six years or supervise the maintenance of records including:

- (1) Any applications for a person that was accepted and is receiving services including any supporting documentation;
- (2) Any documents that determine eligibility;
- (3) Any documents pertaining to the provision of services;
- (4) Any documents on administrative costs; and
- (5) Any fiscal documentation or other records, and information necessary for reporting and accountability as required by the division.

Medical and financial records must be retained for at least six years after the last claim is paid or denied pursuant to § 67:16:34:05. Each CSP must have a written procedure for destruction of records.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** Record retention, § 67:16:34:05.

**46:11:04:05. Policy for disposition of records if ATC CSP closes.** The ATC CSP must have a written policy governing the disposition of its paper or electronic records if the ATC CSP closes or transfers to a new governing body. The policy must provide for at least the following:

(1) Transferring a ~~consumer's~~ participant's record to another ATC CSP if the ~~consumer~~ participant is being transferred to that ATC CSP;

(2) Destroying records not required to be retained by § 46:11:04:04; ~~and~~

(3) Transferring to the division records not covered in subdivisions (1) and (2) of this section; and

(4) Transferring any paper or electronic records intact to the new governing body or owner.

The previous owner or governing body may not destroy or keep in its possession any of the CSP records unless to do so is required by state or federal law.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:06. Transfer of records to new governing body.** ~~If the ATC's ownership or governing body changes, records must be transferred intact to the new governing body or owner. The previous owner or governing body may not destroy or keep in its possession any of the ATC's records~~ Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(2).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~



**46:11:04:07. Insurance.** The ~~ATC~~ CSP must carry insurance that includes general liability, property coverage, workers' compensation, automobile liability, and fidelity bonding insurance.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:08. Determination of product and service charges.** ~~An ATC~~ A CSP that provides vocational training and employment by means of contract work must have policies and procedures that:

(1) Address the time study procedures to be used in determining the rate of reimbursement for ~~consumers~~ participants;

(2) Specify the methods used to ensure competitive bidding practices;

(3) Define the process for documenting information that includes evidence of each ~~consumer's~~ participant's production performance, earning rate, and payment based on the recorded production level; and

(4) Specify the methods used to ensure compliance with applicable federal wage and hour laws.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:09. ~~Protection~~ Confidentiality and protection of records.** ~~When ATC staff members are not in the building, all records must be kept in locked file cabinets or in locked rooms. Electronically stored records must be provided with security to prevent access by unauthorized personnel.~~ Each CSP shall have a policy regarding the confidentiality of participant information to ensure that records, paper or electronic, are protected against loss, tampering, or unauthorized disclosure of information in accordance with 45 C.F.R., Part 160 and 164 (October 1, 2009) and the provisions of this chapter.

The policy shall include provisions to address how identifiable participant information shall be kept confidential. Information of a statistical nature, which cannot be identified with a specific participant, may be used for planning and public information purposes.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:10. Administration of integrated and segregated residential services.**  
~~Integrated and segregated residential services must be under the administrative control of a certified ATC.~~ Repealed.

**Source:** ~~22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.~~

**General Authority:** ~~SDCL 27B-2-26(2).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:04:11. ~~Consumer~~ Participant information to be furnished to division.** ~~All ATCs~~  
A CSP must submit the Inventory for Client and Agency Planning (ICAP) data required by

~~pursuant to § 67:54:03:05 § 67:54:04:06. to the division by the first day of the eleventh month following the annual on-site review and inspection of care required in § 67:54:04:18.~~

~~All ATCs must submit to the division identifying information required by the Division of Developmental Disabilities service record. An ATC must provide a monthly update to the division by the fifth day of each month or notify the division that the agency has no update.~~

Failure to comply with the provisions of this section may result in the withholding of the department's payments for services provided for each ~~consumer~~ participant for whom the required data is not furnished. Payments may be withheld by the department until all data is furnished. Any payment previously withheld will be paid upon submission of all requested data pursuant to this section.

**Source:** 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** Preplacement assessment, § 67:54:04:06.

**Reference:** **Inventory for Client and Agency Planning (ICAP)**, 1986, published by Riverside Publishing, 425 Spring Lake Drive, Itaska, IL 60143-2079. Cost: 25 response booklets \$45 ~~\$76.00~~; Compuscore for the ICAP, \$198 ~~\$334~~.

**~~Note:~~** ~~Service record and related Q&A computer software are available from the Department of Human Services, Division of Developmental Disabilities, Hillsview Properties Plaza, East Highway 34, c/o 500 East Capitol, Pierre, SD 57501.~~

**46:11:04:12. Service agreement modification.** If an ATC ~~terminates~~ a CSP discontinues services to ~~consumers~~ a participant which were purchased by the department under chapter

67:54:03 or 67:54:04 or article 46:10, the department may modify the provisions of ~~those~~ that service ~~agreements~~ agreement.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:13. Management of personal finances.** ~~An ATC~~ A CSP may assume shall have policies and procedures to address the management of a participant's personal finances, ~~of consumers only after meeting requirements of this section. An ATC must have policies and procedures to address the system to be used if the consumer, or the guardian, or the parent if the consumer is a minor elects to have the ATC manage personal funds, as follows:~~ The CSP may manage the participant's finances due to the following:

- (1) At the request of the participant;
- (2) At the request of the participant's parent if the participant is under 18 years of age, or the participant's conservator, if any; or
- (3) The CSP determines the participant's financial welfare is at risk and implements a rights restriction.

The policy must include the following:

- (1) ~~The individual service plan~~ That the ISP must at least annually document the circumstances leading to this action; the rationale for this action; and if appropriate, a plan for returning control of the funds to the ~~consumer~~ participant, including methods and schedules for implementation and documentation that the ~~consumer~~ participant has access to and opportunities for training in how to handle the money;

(2) ~~Each consumer's~~ That the participant's financial record ~~must~~ include documentation of all cash funds, savings, or checking accounts, deposits and withdrawals, and ~~a consumer the~~ participant's ledger and bank statement which provides a record of all funds received and disbursed and the current balance;

(3) ~~Account~~ That account balances and records of transactions ~~must~~ be provided to the ~~consumer~~ participant, the participant's parent if the participant is under 18 years of age, or the participant's conservator, or the ~~consumer's~~ participant's fiscal representative at least ~~quarterly~~ and annually or more often if as requested; and

(4) ~~If the consumer, the legal representative, or the parent if the consumer is a minor, chooses to have the ATC maintain the money of the consumer in a common trust, a separate accounting must be maintained for each consumer for the consumer's interest in a common trust fund~~ That a separate accounting be maintained for any participant's interest held in a common trust fund if applicable.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:14. ~~Adjustment training center~~ CSP bylaws.** Each ATC CSP must adopt bylaws which state its purpose. The bylaws shall:

(1) Provide for a rotating board of directors;

(2) Establish term limits for members of the board of directors. ~~Each term may not exceed three years and each member of the board may serve no more than three consecutive terms;~~

(3) Provide opportunity for ~~consumers~~ participants and family members to be members of the board of directors or a voting board or a voting member of an active board committee;

(4) Provide that the members of the governing board serve without pay; and

(5) Provide that no financial benefit accrue as a result of membership of the board.

A CSP that is an education cooperative is exempt from this section provided the CSP complies with the provisions in SDCL chapter 13-8.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** School boards and school district officers, SDCL chapter 13-8.

**46:11:04:15. Hours open.** Each ATC's CSP's administrative office must be open 40 hours a week, Monday through Friday, except holidays.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

<b>Description of change:</b> Revised.
<b>Purpose of change:</b> Updated terminology, ATC to CSP.
<b>Comments:</b>

~~46:11:05:11~~ **46:11:04:15.01. Staff orientation training.** Newly hired staff must receive an orientation training program. Prior to performing any duties, each new employee, including any temporary employee, shall receive training on fire prevention, accident prevention, and response to emergencies. Also prior to performing any duties, each new employee or temporary employee, shall receive orientation training on abuse, neglect, and exploitation, including:

(1) Techniques of identifying and observing signs of abuse, neglect, and exploitation;

(2) Procedures used in investigating and documenting alleged instances of abuse, neglect, and exploitation; and

(3) Procedures used to report alleged instances of abuse, specifically to whom allegations should be reported, and reporting deadlines.

The CSP shall ensure that any intern or volunteer obtain this training and policy review unless the intern or volunteer is supervised by another staff member at all times.

Within 30 calendar days of each employee's start date, the employee shall receive training on participant rights, the employee's specific duties and position, and the CSP's policies and procedures.

Each new employee's personnel file shall document the dates that training requirements have been met. Orientation must be completed within six months after an employee's start date and must include:

(1) Instruction in the ethical principles related to modifying the behavior of participants and in basic positive behavior support techniques. Staff who will implement behavior support procedures routinely must also receive training prior to the actual implementation of procedures specified in the written ISP;

(2) Disability awareness;

(3) The CSP's philosophy and mission;

(4) First aid; and

(5) Cardiopulmonary resuscitation.

Staff receiving such training must demonstrate competence through testing.

Documentation of such training and the test results must be kept on file in the employee's personnel record.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000, transferred from § 46:11:05:11.

**General Authority:** SDCL 27B-2-26(1).

**Law Implemented:** SDCL 27B-2-26.

**46:11:04:15.02. Employment screening.** Each CSP must have a policy that addresses criminal background checks, felony convictions, and drug screenings for any new and current employees that provide direct service to participants. The policy must include the following:

(1) A description of the system used for background checks;

(2) A description of felony conviction checks for new and current employees utilizing the Office of Inspector General; and

(3) A description of drug screening pursuant to SDCL 27B-1-19.

A copy of the policy must be provided to each employee and any screening results shall be maintained in the employee's file.

**Source:**

**General Authority:** SDCL 27B-2-26(1).

**Law Implemented:** SDCL 27B-1-19, 27B-2-26(1).

**Cross-Reference:** Drug screening policy for community support providers, SDCL 27B-1-19.

**46:11:04:16. Confidentiality of information.**~~Information collected under the provisions of this article and articles 46:10 and 46:13 that is identifiable with a consumer is confidential and not open for public inspection. Information of a statistical nature, which cannot be identified with a specific consumer, may be used for planning and public information purposes~~ Repealed.

**Source:** 24 SDR 190, effective July 16, 1998; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.



**CHAPTER 46:11:05**  
**SERVICE STANDARDS**

Section

46:11:05:01     ~~Service~~ ISP team – Composition ~~and meetings~~.

46:11:05:01.01 ISP time frames.

46:11:05:01.02 ISP participation.

46:11:05:02     Assessments.

46:11:05:03     ~~Individual service plan~~ ISP.

46:11:05:04     ~~Service plan development—Participants~~, Repealed.

46:11:05:05     Service coordinator.

46:11:05:05.01 Service coordinator responsibilities -- Quarterly ISP assessment.

46:11:05:05.02 Behavior support plan policy.

46:11:05:06     Highly restrictive procedures.

46:11:05:06.01 Policy for highly restrictive procedures.

46:11:05:06.02 Prone restraint prohibited.

46:11:05:07     Time-out rooms.

46:11:05:08     ~~Medications to manage behavior—Identification of harmful effects~~, Repealed.

46:11:05:09     ~~Medications to manage behavior—Order by physician or dentist for dental or medical procedures.~~ Chemical intervention.

46:11:05:10     ~~Maladaptive behavior~~, Repealed.

46:11:05:11     ~~Staff orientation training~~, Transferred.

46:11:05:12     Behavior ~~intervention~~ support committee.

46:11:05:13     Human rights committee -- Composition.

46:11:05:14 Human rights committee -- Procedures.

46:11:05:14.01 Combined human rights and behavior support committee.

46:11:05:15 ~~Staff member on duty~~ Time alone.

46:11:05:16 ~~On-call staff~~ Accessing staff assistance.

46:11:05:17 ~~Alternative services,~~ Repealed.

**46:11:05:01. Service ISP team – Composition and meetings.** ~~Within 15 calendar days after initiation of services, the ATC shall identify a service team for each consumer. The team shall develop the service plan. The team must be composed of the consumer and the consumer's service coordinator and may also include the consumer's family, guardian, adult foster care provider, or advocate; other ATC staff, including residential and vocational; and professionals from health care, education, psychology, and social work. Meetings of the service team must be scheduled and conducted in a manner which facilitates the active participation of all members of the team, especially the consumer and the family, guardian, adult foster care provider, or advocate. The team must meet at least annually; however, the consumer or any other member of the team may request a team meeting at any time. The following individuals shall have the opportunity to participate in the development of the ISP:~~

(1) The participant;

(2) The participant's parent if the participant is under 18 years of age;

(3) The participant's guardian, advocate, and/or conservator, if any;

(4) The participant's service coordinator; and

(5) Any other individual desired by the participant.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:01.01. ISP time frames.** From the date of service initiation for each participant the CSP shall:

- (1) Identify the ISP team within 15 calendar days;
- (2) Complete the ISP within 30 calendar days; and
- (3) Implement the ISP within 45 calendar days.

Prior to the development of the ISP, all pertinent information including assessments pursuant to §46:11:05:02, and any previous ISP developed by another agency, must be reviewed in terms of relevance to the participant's current needs and preferences.

The ISP team shall meet to review and revise the ISP within 365 days of the initial ISP and annually thereafter. The ISP meeting may be held beyond the 365 days when circumstances warrant. The service coordinator shall document the reason for exceeding the time requirement. The CSP must provide a ten calendar day advance notice prior to the initial or annual ISP meeting to all team members. The participant or any other member of the ISP team may request a team meeting at any time.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:01.02. ISP participation.** The ISP team meeting shall be scheduled and conducted in a manner which facilitates the active participation of all team members, especially the participant and the family, guardian, conservator, adult foster care provider, or advocate. The service coordinator shall encourage the participant to choose the location of the meeting and shall document if the participant is unable or unwilling to participate in the meeting.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:02. Assessments.** Within 30 calendar days after initiation of services and at least annually thereafter, the ~~consumer~~ participant and the identified ~~service~~ ISP team shall review existing assessment information and identify when complete new assessments or reassessments are necessary if warranted. The ISP team shall document the results of the assessment review. The initial and annual ISP shall include documentation of the results of the team's review of the assessments. If new or reassessments cannot be completed prior to the initial or annual ISP meeting then the reason why and scheduled date of the assessment shall be documented in the ISP. The assessments must include the following if the ISP team determines appropriate:

(1) A physical examination ~~and health assessment, including an analysis of medication levels and current psychotropic medications,~~ performed by a licensed physician or a specially trained physician's assistant or nurse practitioner who is supervised by a licensed physician;

(2) An analysis of medication including psychotropic medications and any interactions;

~~(2)~~(3) A dental examination that includes assessment of oral hygiene practices;

~~(3)~~(4) A social evaluation that includes a social and developmental history, delineation of the type and frequency of social interactions, and descriptions of the ~~consumer's~~ participant's social support network;

(5) A personal outcome assessment to identify and prioritize each participant's preferences;

~~(4)~~(6) A psychological evaluation by a qualified examiner that includes an assessment of the ~~consumer's~~ participant's emotional and intellectual status;

~~(5)(7)~~ (7) An assessment of adaptive behavior or independent living skills that includes functional assessment of skills in the areas of mobility and personal health care;

~~(6)(8)~~ (8) A developmental, educational, or vocational evaluation;

~~(7)(9)~~ (9) A medication and immunization history documented through interviews and a review of records from previous placements; ~~and~~

~~(8)(10)~~ (10) Nutritional, vision, auditory, speech, and language screenings;

(11) Physical and occupational therapy evaluations;

(12) An assistive technology assessment; and

(13) A safety assessment that addresses the participant's safety risks in the areas of environment, health, and personal vulnerability.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:03. Individual service plan ISP.** ~~Within 30 calendar days after initiation of services, each consumer must have an individual service plan for services. The individual service plan shall be implemented within 45 days after initiation of services. The team must convene at least annually to review the plan and shall also meet if problems or changes indicate a need to meet. Prior to the development of a plan, any pertinent information, which may include plans previously developed for the consumer by other agencies, must be reviewed in terms of its relevance to the current needs of the consumer. The plan must address the appropriateness of current services and guardianship status. The individual service plan must document at least one goal. The plan must document at least one service objective or at least one behavior objective, or~~

both, which relate to each goal attainment for the consumer. The ISP shall include documentation of the following:

- (1) The participant's goals including preferences and priorities;
- (2) Specific actions to be taken to attain these goals including the participant's involvement;
- (3) The use of at least one person centered thinking tool;
- (4) The type, scope, amount, duration, frequency, and appropriateness of each service;
- (5) The recommendations from any assessment listed in §46:11:05:02;
- (6) A description of how the participant's behavior support plan, if applicable, is implemented in conjunction with the ISP;
- (7) An evaluation of the appropriateness of guardianship or conservatorship status;
- (8) The frequency that fiscal reports are provided to the participant, the participant's parent if the participant is under 18 years of age, or the participant's conservator, if any, pursuant to §46:11:04:13;
- (9) The amount of time a participant may remain unsupervised;
- (10) A statement informing the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, advocate, or conservator, if any, how to contact the division with any concerns;
- (11) A statement informing the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, advocate, or conservator, if any, how to report and who to report to, any alleged incidents of abuse, neglect, or exploitation;
- (12) A statement informing the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian or advocate, if any, of the services available from the CHOICES waiver and a list of all available CSPs and the right to appeal to the division if choice of services or CSP is denied; and

(13) A statement to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian or advocate, if any, of full disclosure of the potential conflict of interest that exists due to CSPs providing other waiver services and service coordination.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3), 28-1-24.1.

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:04. Service plan development -- Participants.** ~~The following individuals must have the opportunity to participate in the development of the individual service plan:~~

~~(1) The consumer, unless the consumer's inability or unwillingness to participate is documented;~~

~~(2) As applicable, the parent of a minor child, the legally appointed guardian of a child or adult, an advocate acceptable to the consumer, and a spouse;~~

~~(3) Those persons who work or who are expected to work most closely with the consumer;~~  
and

~~(4) Those professionals and other persons with the expertise to design and review elements of the plan, including those who provide training or treatment~~ Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(3).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:05:05. Service coordinator.** Each ~~consumer~~ participant must have a designated service coordinator. The ~~ATC~~ CSP shall provide support to each ~~consumer~~ participant who desires to be the service coordinator for the ~~consumer's~~ participant's own ~~plan~~ ISP. ~~The service coordinator is responsible for monitoring on a monthly basis and for coordinating all activities regarding the implementation of the individual service plan. The monthly monitoring must be documented. If the consumer is the service coordinator, an ATC service coordinator is responsible for monitoring the individual service plan. The service coordinator must observe and document at least quarterly the implementation of individual service plans and the delivery of services and must intervene to ensure implementation of the individual service plan. This observation shall include actual implementation of training and behavior objectives and service objectives and any other observations necessary to determine implementation of the individual service plan. If the service coordinator is responsible for any direct implementation of the consumer's plan that teaches the consumer skill acquisition, another service coordinator or staff member, designated by the ATC, shall conduct quarterly observations of those services provided directly to the consumer by the consumer's service coordinator.~~

**Source:** 22 SDR 104, effective February 13, 1996; 24 SDR 190, effective July 16, 1998; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:05.01. Service coordinator responsibilities -- Quarterly ISP assessment.**

The service coordinator shall coordinate the ISP initially and annually. The service coordinator shall be responsible to complete a quarterly assessment of the ISP. The quarterly ISP assessment shall include information in the following areas:

(1) Monitoring and coordinating of implementation of the ISP;



(2) Observation and documentation of the services as described in 46:11:08:01 and any necessary intervention to ensure the appropriate delivery of ISP services and necessary revisions of the ISP;

(3) Review of all instances of abuse, neglect, or exploitation;

(4) Review of the participant's health and safety;

(5) Monitoring of the participant's progress toward goals or changes to the participant's health, safety, or behavior support plans;

(6) Review of all pertinent information;

(7) Documentation of the participant's involvement in the ISP quarterly monitoring process; and

(8) Documentation of the date completed and by whom.

The service coordinator shall provide the quarterly assessment to the ISP team and document the outcome of the review and any recommendations regarding the status of the ISP.

If the participant's service coordinator provides a service directly to the participant, another service coordinator shall complete a quarterly assessment regarding that service.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:05.02. Behavior support plan policy.** Each CSP shall have a policy approved by the division that addresses behavior support plans. This policy shall include:

(1) A requirement that prior to implementing the behavior support plan, compliance with the requirements in SDCL 27B-8-54 shall be met;

(2) A requirement that positive behavioral approaches are implemented and documented prior to implementing more restrictive procedures;

- (3) A requirement that only staff with prior training and demonstrated competency implement behavior supports;
- (4) A requirement that participants only receive the amount of behavior and chemical intervention necessary to prevent harm to the participant or others;
- (5) Documentation in the behavior support plan that the severity of the behavior justifies incorporating highly restrictive procedures;
- (6) A procedure for reviewing the technical aspects of highly restrictive procedures prior to implementation;
- (7) A requirement for regular review of highly restrictive procedures for any adverse effects;
- (8) A requirement that participants not be subjected to highly restrictive procedures or punishment for the convenience of staff or in lieu of a behavior support plan;
- (9) Due process, which includes review by the human rights committee, the behavior support committee, appeal through the CSP grievance process, and consent of the participant or the participant's legally authorized representative prior to implementation;
- (10) Documentation in the participant's ISP of the ISP team's consensus that the benefit of any highly restrictive procedures outweigh any harmful side effects; and
- (11) A requirement that prior to implementing the behavior support plan compliance with the requirements in SDCL 27B-8-51, 27B-8-52, and 27B-8-55 shall be met.

**Source:**

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4), 27B-8-51, 27B-8-52, 27B-8-55.

**Cross-References:**

Use of aversive intervention techniques prohibited, SDCL 27B-8-51.

Restriction or suspension of rights only after due process, SDCL 27B-8-52

Behavior intervention programs – Prerequisites to implementation, SDCL 27B-8-54

Highly restrictive procedures – Limitations on use, SDCL 27B-8-55.

**46:11:05:06. Highly restrictive procedures.** ~~Each ATC must have policies addressing the use of highly restrictive procedures. Such Highly restrictive procedures include physical restraint or chemical intervention, medications to manage behavior, time-out rooms, aversive conditioning, or other techniques with similar degrees of restriction or intrusion. Each ATC must have policies that include the following:~~

~~(1) The service team process used to determine the most appropriate restrictive procedure to use for the consumer's needs and restoration plan;~~

~~(2) Documentation of the service team's analysis of positive approaches and the less restrictive procedures that were used before implementation of a highly restrictive procedure;~~

~~(3) Procedures for review and approval of the use of highly restrictive procedures by the ATC's human rights committee and behavior intervention committee prior to implementation and at least every six months thereafter. The review date may not exceed six months from the date of approval;~~

~~(4) A behavior intervention plan specifying the circumstances under which time-out may be used, the maximum time it may be used, and the procedures to be followed. Behavior intervention plans must be approved prior to implementation and reviewed at least every six months;~~

~~(5) Procedures for review and approval of the use of highly restrictive procedures by the consumer's parent if the consumer is under 18 years of age, or the legal guardian; and~~

~~(6) Procedures to document, in the consumer's plan, timelines for notifying the consumer's parent if the consumer is under 18 years of age or the legal guardian when highly restrictive procedures are implemented.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4).

**Cross-References:** ~~Behavior intervention committee, § 46:11:05:12; Human rights committee—Composition, § 46:11:05:13.~~

**46:11:05:06.01. Policy for highly restrictive procedures.** Each CSP shall have a policy addressing the use of highly restrictive procedures. The policy shall include:

(1) Procedures to ensure compliance with SDCL 27B-8-51, 27B-8-52, 27B-8-54, and 27B-8-55;

(2) A description of the ISP team's process including plan development, identifying the most appropriate highly restrictive procedure for the participant's needs and restoration plan, and consent by the participant, or the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any;

(3) Procedures for review, approval, and right to appeal, the highly restrictive procedures by the participant, or the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any;

(4) A review and approval by the human rights committee and behavior support committee prior to implementation and at least every six months thereafter;

(5) A description of circumstances under which a time-out room may be used, the maximum time it may be used, and the procedures to be followed;

(6) A requirement that the participant's plan include timelines for notifying the participant's parent if the participant is under 18 years of age, or the guardian, if any, when highly restrictive procedures are used;

(7) A requirement to address emergency rights restriction pursuant to §46:11:03:09, including time-lines of team meetings and review by the human rights committee and the behavior support committee; and

(8) Procedures to ensure regular oversight of implementation and staff training.

**Source:**

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4), 27B-8-52, 27B-8-56.

**Cross-References:**

Behavior support committee, § 46:11:05:12.

Human rights committee -- Composition, § 46:11:05:13.

Use of aversive intervention techniques prohibited, SDCL 27B-8-51.

Restriction or suspension of rights only after due process, SDCL 27B-8-52

Behavior intervention programs – Prerequisites to implementation, SDCL 27B-8-54

Highly restrictive procedures – Limitations on use, SDCL 27B-8-55.

**46:11:05:06.02. Prone restraint prohibited.** A prone restraint is defined as a position that includes the participant being facedown. Any restraint that fits this definition or impedes a participant's breathing is prohibited.

**Source:**

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4), 27B-8-52.

**46:11:05:07. Time-out rooms.** ~~Time-out~~ A time-out room refers to an enclosed area in which the ~~consumer~~ participant is placed ~~contingent upon the exhibition of~~ when exhibiting a ~~maladaptive~~ problem behavior, ~~in which~~ and where reinforcement is not available and ~~from~~

~~which~~ egress is denied until appropriate behavior is exhibited. ~~Time-out rooms~~ A time-out room may only be used ~~only~~ under the following circumstances:

- (1) CSP staff shall provide continuous observation of the ~~consumer~~ participant;
- (2) The entry to the time-out room ~~by ATC staff~~, may not be locked with a key;
- (3) The time-out room shall, ~~and must~~ allow for immediate staff entry.

~~Time-out rooms~~ A time-out room may only be used as part of a behavior ~~intervention~~ support plan approved by both the ATC's CSP's human rights and behavior ~~intervention~~ support committees.

~~Time-out rooms~~ A time-out room may not be used in a punitive fashion. Each use of the time-out room may not exceed ~~one hour~~ 15 minutes. If after 15 minutes, the participant continues to exhibit a problem behavior that poses a threat to the participant or others, the use of the time-out room may continue for another 15 minutes. The maximum amount of time a participant may be in the time-out room shall not exceed one continuous hour. The CSP shall document any use of the time-out room.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4), 27B-8-52, 27B-8-56.

#### **46:11:05:08. Medications to manage behavior -- Identification of harmful effects.**

~~Each program using medications to manage behavior must identify the potential harmful effects of the medications in nontechnical terms so that all team members can understand them~~

Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 23 SDR 2, effective July 18, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(3).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:05:09. Medications to manage behavior -- Order by physician or dentist**

**Chemical intervention.** ~~If physical restraints or medications are used to control the behavior of a consumer during a necessary medical or dental procedure, the consumer's plan must document that the behavior could not otherwise be controlled and must include a physician's or dentist's order for the restraint or medication. The participant shall have protections through due process for the use of psychoactive medications. Any medication that sedates the participant during a medical or dental procedure must have the following documentation:~~

- ~~(1) An order from the doctor or dentist for the medication;~~
- ~~(2) Prior consent from the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any;~~
- ~~(3) Documentation that the medical or dental procedure could not be completed without the use of medication, and;~~
- ~~(4) Documentation of review by a quorum of the human rights committee prior to administration of the medication to ensure proper application of the medication.~~

~~The participant's ISP shall include documentation of the team's consensus that the benefits of any medication prescribed for behavior management outweigh any harmful side effects and those side effects shall be documented in non-technical terms as well as a plan for reduction or elimination of the medication.~~

~~Any medication used with a behavior support plan pursuant to § 46:11:05:05.02 shall be considered highly restrictive and shall meet the criteria set forth in §46:11:05:06.01.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4), 27B-8-52.

**46:11:05:10. Maladaptive behavior.** ~~The individual service plan of a consumer who exhibits maladaptive behavior must include provisions to teach the consumer the circumstances, if any, under which the behavior can be exhibited adaptively; to teach the consumer how to channel the behavior into similar but adaptive expressions; or to replace the behavior with behavior that is adaptive~~ Repealed.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(3).~~

**Law Implemented:** ~~SDCL 27B-2-26.~~

**46:11:05:11. Staff orientation training.** ~~Newly hired staff must receive an orientation training program. Prior to performing any duties, each new employee, including any temporary employee, shall receive training on fire prevention, accident prevention, and response to emergencies.~~

~~Within 30 calendar days of each employee's start date, the employee shall receive training on consumer rights, the employee's specific duties and position, and the ATC's policies and procedures.~~

~~Each new employee's personnel file shall document the dates that training requirements have been met. Orientation must be completed within six months after an employee's start date and must include:~~



~~(1) Instruction in the ethical principles related to modifying the behavior of individuals and in basic positive behavior intervention techniques. People who will implement behavior intervention procedures routinely must also receive training prior to the actual implementation of procedures specified in the written individual service plans;~~

~~(2) Definitions of abuse, neglect, and exploitation of consumers;~~

~~(3) Techniques of identifying and observing signs of abuse, neglect, and exploitation;~~

~~(4) Procedures used in investigating and documenting alleged instances of abuse, neglect, and exploitation;~~

~~(5) Procedures to be used to report alleged instances of abuse, specifically to whom allegations should be reported, and reporting deadlines;~~

~~(6) Disability awareness;~~

~~(7) The ATC's philosophy and mission; and~~

~~(8) First aid.~~

~~Staff receiving such training must demonstrate competence through testing.~~

~~Documentation of such training and the test results must be kept on file in the employee's personnel record.~~ Transferred to §46:11:04:15.01.

~~**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.~~

~~**General Authority:** SDCL 27B-2-26(1).~~

~~**Law Implemented:** SDCL 27B-2-26.~~

**46:11:05:12. Behavior intervention support committee.** Each ATC CSP must have a behavior intervention support committee that is appointed and selected by the ATC CSP, which reviews the technical adequacy of and approves all behavior intervention support plans which use any of the highly restrictive procedures listed in § 46:11:05:06.

The behavior ~~intervention~~ support committee must be composed of a person with experience or training regarding behavior ~~intervention~~ support and a physician, pharmacist, or other professional qualified to evaluate proposals for the use of medications to manage behavior. The behavior ~~intervention~~ support committee must be provided with training in the effectiveness of behavior ~~intervention~~ support techniques, the ~~ATC's~~ CSP's mission and philosophy, behavior changing medication, and disability awareness.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:13. Human rights committee -- Composition.** Each ~~ATC~~ CSP must have a human rights committee or participate in a multiagency committee which ensures that each ~~consumer's~~ participant's rights are supported. The committee's membership is appointed and selected by the ~~ATC~~ CSP and its composition must meet the following criteria:

- (1) Committee membership must include ~~consumers~~ at least one participant or ~~their representatives~~ a participant's representative;
- (2) At least one-third of the committee's members may not be affiliated with the ~~ATC~~ CSP; and
- (3) At least one member of the committee ~~has~~ must have training or experience with issues and decisions regarding human rights.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:14. Human rights committee -- Procedures.** The human rights committee must use the following procedures:

(1) Review and approve or disapprove all behavior ~~intervention~~ support plans which use any of the highly restrictive procedures listed in § 46:11:05:06 prior to implementation. The review must ensure the opportunity for the informed consent of and participation by the ~~consumer and the consumer's guardian, family member~~ participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, or advocate in the development of highly restrictive ~~interventions~~ procedures;

(2) ~~If such plans continue to be implemented, review~~ Review and approve or disapprove all behavior support plans which use any of the highly restrictive procedures listed in § 46:11:05:06 ~~them~~ at least every six months;

(3) Review each ~~consumer's~~ participant's restrictions of rights and restoration plan pursuant to §§ 46:11:03:08 and 46:11:03:10;

(4) Review and approve the ATC's CSP's policies, procedures, and practices in limiting rights of ~~consumers-participants~~ and

(5) Be provided with training in individual rights, disability awareness, and the ATC's CSP's philosophy and mission when a new member is appointed;

(6) Make a determination within 30 calendar days upon receipt of any requests for appeal of any rights restriction by a participant, the participant's parent, the participant's guardian or conservator, if any; and;

(7) Any highly restrictive procedure or rights restriction implemented, due to the participant exhibiting behaviors that may endanger self or others, shall be reviewed by no less than a quorum of the human rights committee. A quorum consists of a minimum of fifty percent

of the human rights committee members participating in the meeting and one of those members shall be a non-CSP affiliated member.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4).

**46:11:05:14.01. Combined human rights and behavior support committee.** A CSP may establish a single committee composed of members meeting the requirements of §§46:11:05:12 and 46:11:05:13 and shall meet the responsibilities of §§ 46:11:05:12 and 46:11:05:14.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:05:15. Staff member on duty Time alone.** For each ~~consumer participant~~, the ~~consumer's service participant's~~ ISP team must determine and document the maximum amount of time, if any, ~~for which that person~~ the participant may be left unsupervised ~~at home~~. A staff member must be on duty when supervision of the ~~consumer participant~~ is required.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4).

**46:11:05:16. On-call staff Accessing staff assistance.** Each ~~ATC CSP~~ must have a policy which specifies how ~~consumers participants~~ can access staff assistance when they are unsupervised. ~~Training~~ Assessment and training in accessing on-call staff and emergency

services must be provided to each ~~consumer~~ participant as indicated by each ~~consumer's~~ participant's needs and documented in the ISP.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3)(4).

**Law Implemented:** SDCL 27B-2-26(3)(4).

**46:11:05:17. Alternative services.** ~~Alternative services provide learning opportunities in natural community settings to improve or maintain a consumer's skills in:~~

- ~~(1) Communication;~~
- ~~(2) Socialization;~~
- ~~(3) Mobility;~~
- ~~(4) Health and physical fitness;~~
- ~~(5) Leisure and retirement or both; and~~
- ~~(6) Educational and functional skills.~~

~~Alternative services do not replace existing residential services that would normally be a component of a consumer's individual service plan as a residential service. The individual service plan shall document how each consumer's team determines the appropriateness for alternative services. The individual service plan shall identify the consumer's wants, needs, goals, and objectives. Recreational or leisure activities provided as alternative services shall be therapeutic and in accordance with a specific goal listed in the individual service plan.~~

~~Alternative services shall be furnished as specified in the plan~~ Repealed.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

## CHAPTER 46:11:06

### SAFETY, SANITATION, AND PHYSICAL FACILITIES STANDARDS

#### Section

- 46:11:06:01 Safety and sanitation plan.
- 46:11:06:02 Life safety codes.
- 46:11:06:03 Minimum separation between buildings.
- 46:11:06:04 Maximum capacity for group homes.
- 46:11:06:05 Minimum space requirements of classrooms, day habilitation, and shops.
- 46:11:06:06 Bedroom capacity.
- 46:11:06:07 New construction or remodeling.
- 46:11:06:08 Team approval for safe environments.
- 46:11:06:09 Physical facility standards.
- 46:11:06:10 Food storage.
- 46:11:06:11 Cleaning and sanitizing kitchen equipment.
- 46:11:06:12 Kitchen equipment and utensil handling.
- 46:11:06:13 Other hazardous conditions.
- 46:11:06:14 Personal cleanliness.
- 46:11:06:15 Monitor ~~consumer~~ participant safety.

**46:11:06:01. Safety and sanitation plan.** ~~The ATC~~ Each CSP must have a health, safety, sanitation, and disaster plan approved by the division which ensures the health and safety of the ~~consumers~~ participants. The plan shall include:

- (1) Specific procedures for responding to medical emergencies;
- (2) Procedures for responding to missing ~~consumers~~ participants;
- (3) Procedures for responding to fire and natural disasters, including evacuation plans, training, and regularly scheduled drills;
- (4) Procedures to ensure that equipment is properly installed and maintained and that ~~persons~~ staff and participants operating the equipment are trained;
- (5) Procedures to ensure that staff ~~and consumers~~ and participants are free from communicable disease and receive follow-up as recommended by the South Dakota Department of Health if diagnosed with any reportable communicable disease pursuant to chapter 44:20; and
- (6) Procedures to notify the division of any staff diagnosed with a reportable communicable disease once the CSP becomes aware of the diagnosis; and
- ~~(6)(7)~~ Procedures to ensure sanitation of all settings in which services are provided.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** Communicable disease control, chapter 44:20. Critical incident reports -  
- Submission to the division 46:11:03:02

**46:11:06:02. Life safety codes.** For each building ~~which~~ the ~~ATC~~ CSP owns, the ~~ATC~~ CSP must be in compliance with the applicable fire safety standards in the ~~1997~~ 2000 edition of the **Life Safety Code**. Each ~~ATC~~ CSP shall use fire drills to determine evacuation capability. Each ~~ATC~~ CSP shall conduct six fire drills each year for each residential building that it owns; or leases, ~~or rents~~. At least two of the six fire drills shall be conducted during the night when ~~consumers~~ participants are sleeping. Each ~~ATC~~ CSP shall conduct a fire drill within 30 calendar

days of a new ~~consumer~~ participant moving into a residential facility. The ATC CSP shall document the following:

- (1) Time taken to reach the point of safety;
- (2) Date and time of day the drill occurred;
- (3) Location of simulated fire origin;
- (4) Escape paths used; and
- ~~(4)~~(5) Comments relating to ~~consumers~~ participants who resisted or failed to participate in the drill.

At least one fire drill shall be conducted every month for each ATC's CSP's day habilitation facility. During severe weather the monthly fire drills may be deferred, as long as, the total number of fire drills per year are achieved.

**Source:** 22 SDR 104, effective February 13, 1996; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**Reference:** **Life Safety Code 101**, National Fire Protection Association, ~~1997~~ 2000 edition. Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9904. Cost: ~~\$39.50~~ 75.00.

**46:11:06:03. Minimum separation between buildings.** The minimum separation allowed between all buildings exclusively serving ~~consumers~~ participants is 300 feet. This section applies only to structures ~~on which~~ the certified ATC CSP began construction on or ~~which~~ were purchased ~~or leased~~ after June 14, 1984. The CSP shall obtain prior approval from the division before leasing or purchasing a building that does not meet the requirement of this section.



**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:04. Maximum capacity for group homes.** ~~No more than eight consumers may reside in a group home receiving initial approval after July 1, 1990.~~ No more than eight ~~consumers~~ participants may reside in a group home that is owned or leased ~~or rented by an ATC~~ a CSP after July 1, 2000.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:05. Minimum space requirements of classrooms, day habilitation, and shops.** A minimum of 20 square feet of classroom or day habilitation area or 50 square feet of area in shops and similar vocational rooms is required for each ~~consumer~~ participant ~~in each classroom or shop.~~

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:06. Bedroom capacity.** Bedrooms in ~~group~~ homes may accommodate from one to two ~~consumers~~ participants. Each home a CSP leases or constructs after November 1, 2013 shall have at least 100 square feet per participant for a home with a single sleeping room and at

least 75 square feet per participant for a home with multiple sleeping rooms, excluding lease renewals prior to this date. Bedrooms must provide at least 60 square feet for each consumer in multiple sleeping rooms and at least 80 square feet in single rooms, with additional Additional space shall be provided where needed for bedside assistance and use of wheelchairs. If an ATC a CSP constructs new residential ~~congregate facilities~~ homes for participants after July 1, 1996, the ~~home~~ homes must consist of single occupancy bedrooms.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:07. New construction or remodeling.** ~~Before construction begins, an ATC shall submit plans and specifications for the construction of new buildings, additions to existing buildings, or conversion or alterations of existing buildings to the division for determination of compliance with applicable portions of chapter 46:11:06. Each CSP shall submit plans to the division for approval of any new construction or remodeling of any existing structures owned by the CSP.~~ These plans must show the general arrangement of the building and the intended purpose and the fixed equipment for each room. Newly constructed or remodeled physical facilities may not be used by ~~consumers~~ participants until approval is obtained from the division.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:08. Team approval for safe environments.** Each ~~consumer's team~~ participant's ISP team shall determine and document during the development of the ~~service plan~~ ISP as ~~defined in subdivision 46:11:01:01(16)~~ that the ~~consumer's~~ participant's living and work environments ~~are safe~~ meet minimum safety requirements pursuant to this chapter. If unsafe conditions are identified, the ISP team shall develop a plan which will immediately rectify the situation to ensure that the ~~consumer~~ participant is safe. The division may require a ~~the~~ ISP team that has approved a ~~consumer's~~ participant's environment as safe to reconvene and reconsider its determination.

**Source:** 24 SDR 190, effective July 16, 1998; 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**46:11:06:09. Physical facility standards.** The following standards apply to each building that the ~~ATC~~ CSP owns, or leases, ~~or rents~~:

- (1) Hot and cold water must be supplied through a mixing faucet to all lavatories, showers, or tubs. Maximum water temperatures may not exceed 120 degrees Fahrenheit;
- (2) The water heater must be capable of providing a continuous supply of water heated to 120 degrees Fahrenheit during peak periods of hot water usage. The hot water supply system must be large enough to meet the peak hot water demands of the facility;
- (3) Any food service area must have light fixtures that contain shielded or shatterproof bulbs;
- (4) Food must be free from spoilage, filth, or other contamination and must be safe for human consumption;
- (5) The use of home canned food is prohibited;

(6) Food must be protected at all times from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs, sneezes, flooding, drainage, and overhead leakage or dripping from condensation;

(7) The temperature of potentially hazardous foods as defined in § 44:02:07:20 must be 41 degrees Fahrenheit or below or 140 degrees Fahrenheit or above at all times except as otherwise provided in this chapter;

(8) Effective measures must be taken to minimize the presence of rodents, flies, cockroaches, and other insects on the premises. The premises must be maintained so as to prevent the harborage or feeding of insects or rodents;

(9) All parts of the facility must be kept clean, neat, and free of litter and rubbish;

(10) ~~If the facility provides laundry service for common-use linens or if more than one consumer's clothing is laundered together and if the water temperature at the washing machine is less than 160 degrees Fahrenheit, bleach or a disinfectant must be used in the laundering process~~  
The facility must meet the linen requirements in § 44:04:02:08;

(11) Garbage and refuse must be kept in durable, easily cleanable, insect-proof and rodent-proof containers that do not leak and do not absorb liquids; ~~and~~

(12) Carpeting, walls, and ceilings must be maintained in good repair; and

(13) For any owned CSP structure the CSP shall meet the fire extinguisher requirements in § 44:04:20:12. The CSP shall ensure that the fire extinguishers are inspected annually by the inspection company.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**Cross- references:**

General food protection, § 44:02:07:20.

Linen, § 44:04:02:08.

Fire extinguishers, § 44:04:20:12.

**46:11:06:10. Food storage.** For each building that the ~~ATC~~ CSP owns, or leases, ~~or rents~~, the following are general requirements for food storage:

(1) Food, whether raw or prepared, if removed from the container or package in which it was obtained, must be stored in a clean, covered container except during necessary periods of preparation or service. Container covers ~~musts~~ must be impervious and nonabsorbent except that linens or napkins may be used for lining or covering bread or roll containers;

(2) Containers of food must be stored a minimum of six inches above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area;

(3) Metal pressurized beverage containers and cased food packaged in cans, glass, or other waterproof containers need not be elevated when the food container is exposed to floor moisture;

(4) Food and containers of food may not be stored under exposed or unprotected sewer lines or water lines except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited;

(5) Food not subject to further washing or cooking before serving must be stored in a way that protects it against cross-contamination from food requiring washing or cooling; and

(6) Unless its identity is unmistakable, bulk foods such as cooking oil, syrup, salt, sugar, or flour not stored in the product container or package in which it was obtained must be stored in a container identifying the food by its common name.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**46:11:06:11. Cleaning and sanitizing kitchen equipment.** For each building ~~that the~~ ~~ATC CSP~~ owns, or leases, ~~or rents~~, any kitchen equipment and utensils must be cleaned, rinsed, and sanitized after each use as provided in § 44:02:07:56 or 44:02:07:58. Utensils and equipment must be air dried. Kitchenware and food contact surfaces of equipment must be washed, rinsed, and sanitized by washing with a solution ratio of ~~one ounce of household bleach to two gallons of water~~ one quarter ounce or one and one half teaspoon of household bleach to one gallon of water, or the equivalent of any sanitizer purchased in place of the bleach, and approved by the division. Sanitize dining tables and other surfaces after each use and following any interruptions of operations during which contamination might have occurred to keep the equipment free of accumulations of dust, dirt, food particles, and other debris.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**Cross- references:**

Manual cleaning and sanitizing requirements, §44:02:07:56.

Mechanical cleaning and sanitizing requirements, §44:02:07:58.

**46:11:06:12. Kitchen equipment and utensil handling.** For each building ~~which the~~ ~~ATC CSP~~ owns, or leases, ~~or rents~~, cleaned and sanitized kitchen equipment and utensils must be handled in a way that protects them from contamination. Spoons, knives, and forks must be touched only by their handles. Cups, glasses, bowls, plates, and similar items must be handled without contact with inside surfaces or surfaces that contact the user's mouth.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**46:11:06:13. Other hazardous conditions.** For each building ~~which~~ the ~~ATC~~ CSP owns, the division may direct ~~an ATC~~ a CSP to remove or correct other hazardous conditions not covered in this chapter if the division considers the conditions to have the potential to cause injury or illness to ~~consumers~~ participants or staff.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**46:11:06:14. Personal cleanliness.** If ~~an ATC~~ a CSP provides food preparation services, ~~all persons~~ anyone involved with the food preparation shall thoroughly wash their hands and the exposed portions of their arms with soap and warm water before starting and as often as necessary during the food preparation to keep them clean. They shall also wash after smoking, eating, drinking, or using the toilet. They shall keep their fingernails and outer clothing clean.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

**46:11:06:15. Monitor ~~consumer~~ participant safety.** The ~~ATC~~ CSP shall document all incidents, injuries, and ~~medication~~ medication errors that impact the health, safety, and welfare of ~~for each consumer~~ participant. The documentation shall include the location of the incident, injury or medication error, and level of staff and medical personnel involvement. The ~~ATC~~ CSP shall maintain a log of all ~~consumer~~ participant incidents, injuries, and medication errors. ~~At~~

~~least annually the ATC shall review the documentation of information, assess the information, and implement preventative measures. The results of the annual review shall be documented.~~

The CSP shall collect, document and submit to the division, at least annually the findings of the data analysis.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(5).

**Law Implemented:** SDCL 27B-2-26(5).

## **CHAPTER 46:11:07**

### **HEALTH CARE SERVICES**

#### **Section**

46:11:07:01     Definitions.

46:11:07:02     Medication administration defined.

46:11:07:03     Delegation defined.

46:11:07:04     Registered nurse--Proof of licensure.

46:11:07:05     Assistance with self-administration of medications.

46:11:07:06     Self-administration policy -- Level of assistance required.

46:11:07:07     Medication administration curriculum.

46:11:07:08     Medication administration proficiency level -- Requirements -- Documentation.

46:11:07:09     Annual proficiency review -- Documentation.

46:11:07:10     Medication errors.

46:11:07:11     Storage of controlled substances.



46:11:07:12 Medication destruction -- Documentation.

46:11:07:13 Minimum education requirements for new employees who will administer medication.

46:11:07:14 Prior training.

46:13:01:15 Administration of medications via gastrostomy or jejunostomy tube.

46:11:07:16 Preventive health care -- Early detection.

46:11:07:17 Annual blood levels.

**46:11:07:01. Definitions. Terms used in this chapter mean:**

(1) "Controlled substances," any drug or chemical whose possession and use are regulated under the Federal Controlled Substances Act of 1970;

(2) "Gastrostomy," the surgical creation of a gastric fistula through the abdominal wall with insertion of a tube;

(3) "Jejunostomy," the surgical creation of an opening into the jejunum;

(4) "Medication administration training," the provision of a medication administration training curriculum under the supervision of a licensed registered nurse;

(5) "Nasogastric tube," a tube which is inserted nonsurgically through the nose and extends into the stomach;

(6) "Parenteral route of administration," the administration of medication by injection, including interdermal subcutaneous, intramuscular, or intravenous injection;

(7) "Supervision," monitoring by a licensed registered nurse.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:02. Medication administration defined.** Medication administration is the administration of medications, other than by the parenteral route or nasogastric tube, under the supervision of a licensed registered nurse. The steps in medication administration include:

(1) Removing an individual dose from a previously dispensed, labeled container, including a unit dose container;

(2) Verifying dose with the physician's order or medication administration record;

(3) Giving the individual dose to whom it is prescribed; and

(4) Documenting the time, person's name giving the dose, and the dose given.

A copy of a physician's order or prescription for each medication being administered must be kept at the CSP.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:03. Delegation defined.** Delegation is the transfer of the authority to perform a specific nursing or medication administration task from a licensed registered nurse to a CSP employee pursuant to §§ 20:48:04.01:01, 20:48:04.01:02, and 20:48:04.01:07.

The trained CSP employee must perform the nursing task or medication administration task for a specific participant through delegation. The trained CSP employee may not re-delegate a delegated task.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**Cross-References:**

General criteria for delegation, §20:48:04.01:01.

Supervision, §20:48:04.01:02.

Nursing tasks that may not be delegated, §20:48:04.01:07.

**46:11:07:04. Registered nurse -- Proof of licensure.** The registered nurse providing delegation and supervision to non-licensed trained staff employed by the CSP must be licensed pursuant to chapter 20:48:03. The CSP must document verification with the Board of Nursing to determine that a nurse is actively licensed or has privilege to practice in the state of South Dakota.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**Cross-Reference:** Licensing and licenses, chapter 20:48:03.

**46:11:07:05. Assistance with self-administration of medications.** Assistance with self-administration of medications is the act of assisting a participant with one or more steps in the process of taking medications, but not actual administration of medications. Assistance with self-administration of medications may include the following:

- (1) Opening the medication container;
- (2) Reminding the participant of the proper time to take the medication;
- (3) Helping to remove the medication from the container; and
- (4) Returning the medication container to storage.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:06. Self-administration policy -- Level of assistance required.** Each CSP must have a policy to address the assessment of a participant's ability to self-administer medications. The policy shall include:

- (1) An initial assessment to determine the level of medication administration assistance needed by a participant;
- (2) At least an annual assessment to determine if the level of medication administration assistance needed by a participant has changed;
- (3) A requirement for the participant and the participant's team to review initially and annually thereafter the assessment of the level of medication administration assistance needed;
- (4) A process to evaluate the participant's level of assistance needed at any time a participant expresses the desire to self-administer medications; and
- (5) Supports if a participant expresses the desire to self-administer medications and an assessment indicates the need for training.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:07. Medication administration curriculum.** Each CSP shall provide a minimum of twenty hours of medication administration training to employees, including academic instruction and practical application. Updates to the curriculum shall be submitted to the division for review and approval prior to implementation. This training must be conducted under the supervision of a licensed registered nurse. The content of the training for medication administration shall include:

(1) General information relevant to the administration of medications including:

(a) Governmental regulations related to the practice of nursing, the administration of medication, and the storage, administration, and recording of controlled substances;

(b) Ethical issues;

(c) Terminology, abbreviations, and symbols;

(d) Medication administration system utilized by the CSP and any relevant policies and procedures;

(e) Forms of medication;

(f) Procedures and routes of medication administration;

(g) Medication references available;

(h) The role and limitations of staff in administering medications;

(i) Legal responsibilities to the participants, the nurse, and the CSP; and

(j) The six rights of medication administration: right person, right medication, right dose, right time, right route, and right documentation; and

(2) An overview of major categories of medications as related to body systems and basic principles of drug therapy;

(3) Additional instruction, including those categories of medications related to the specific needs of the participants that the staff will be assisting;

(4) Reporting observations for the well-being of the participant, including potential side effects and adverse reactions to medications;

(5) Assistance with safe and accurate self-administration or administration of medications;  
and

(6) Reporting of medication administration errors.

The training may also include the areas of first aid, infection control, response to emergencies, seizures, and communicable diseases.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:08. Medication administration proficiency level -- Requirements --**

**Documentation.** An employee must demonstrate proficiency in medication administration before administering medication or assisting with self-administration of medication to participants.

The required level of proficiency in medication administration is obtaining a score of at least 90 percent through a written examination, prepared by the CSP, and demonstrating clinical proficiency on a performance checklist. The written examination shall address the areas listed in §46:11:07:07. The CSP shall maintain documentation of an employee's training and proficiency level in the employee's personnel file.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:09. Annual proficiency review -- Documentation.** CSP employees completing the medication administration training are subject to a proficiency review at least annually that is supervised by a licensed registered nurse. The CSP shall maintain documentation of annual evaluations of an employee's proficiency in the employee's personnel file.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:10. Medication errors.** Each CSP must have policies and procedures that address medication errors. The policies and procedures shall address these areas:

- (1) A definition of medication error;
- (2) The types or severity of medication errors;
- (3) Documentation of medication errors;
- (4) Action to be taken as a result of medication errors;
- (5) A process for on-going quality assurance and monitoring of medication errors; and
- (6) Prevention of medication errors.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:11. Storage of controlled substances.** Each CSP shall have a policy that addresses the proper storage of Schedule II controlled substances. The policy shall include:

(1) Any Schedule II controlled substance must be stored in the original container it arrived in from the pharmacist that dispensed it;

(2) Any Schedule II controlled substance must be stored in a locked compartment within a locked container, cabinet, or closet; and

(3) All Schedule II controlled substances must be accounted for and documented daily;

(a) Any Schedule II controlled substance used by a participant who self-administers must be stored and accounted for in a manner determined to be safe by that participant's team and documented in the ISP.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:12. Medication destruction -- Documentation.** The destruction of medication shall be done by the following personnel:

(1) Medications that are not controlled substances may be destroyed in the facility by a professional nurse and another witness or returned to the pharmacy; and

(2) Medications that are controlled substances may be destroyed in the facility by a pharmacist and a professional nurse or returned to the pharmacy.

Each CSP shall have policies and procedures that include the methods of medication destruction utilized if not done in the pharmacy by the pharmacist. The CSP shall maintain documentation of destruction of medications including returning medications to the pharmacy for destruction.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).



**46:11:07:13. Minimum education requirements for new employees who will administer medication.** Any employee hired by a CSP after February 1, 1996, whose duties include the administration of medications or assistance with self-administration of medications, must be a high school graduate or possess a general equivalency diploma.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:14. Prior training.** Any employee who has received prior medication administration training from another CSP must provide documentation with proof of prior training and demonstrate the level of proficiency required by § 46:11:07:08.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**Cross-Reference:** Medication administration proficiency level -- Requirements -- Documentation, §46:11:07:08.

**46:11:07:15. Administration of medications via gastrostomy or jejunostomy tube.** In accordance with SDCL subdivision 36-9-28(10), the administration of medications includes medication administered via an established gastrostomy or jejunostomy tube, under the supervision of a licensed registered nurse. This does not include administration of medications via a nasogastric tube or by the parenteral route.

**Source:**

**General Authority:** SDCL 27B-2-26(1), 36-9-28(10).

**Law Implemented:** SDCL 36-9-28(10).

**46:11:07:16. Preventive health care -- Early detection.** The CSP shall offer education to a participant and assist the participant in obtaining preventive health care evaluations consistent with the American Cancer Society Guidelines for Early Detection of Cancer. The CSP will assist a participant in implementing any recommendations based on the preventive health care evaluations.

The CSP must provide the participant or assist the participant in obtaining any immunization as recommended by the most current available Immunization Schedule from the Centers for Disease Control and Prevention. The CSP shall keep a record of the participant's immunization status.

**Source:**

**General Authority:** SDCL 27B-2-26(3), 36-9-28(10).

**Law Implemented:** SDCL 27B-2-26(3), 36-9-28(10).

**References:** American Cancer Society Guidelines for Early Detection of Cancer. A copy may be obtained free of charge on-line at [www.cancer.org](http://www.cancer.org) then search for early detection of cancer.

**Immunization Schedule,** current version available on-line at [www.cdc.gov/vaccines](http://www.cdc.gov/vaccines).

**46:11:07:17. Annual blood levels.** The CSP shall assist the participant in obtaining blood levels at least annually or as recommended by the participant's physician related to specific medications or diagnoses. The CSP shall assist the participant with obtaining follow-up medical care related to any non-therapeutic levels.

**Source:**

**General Authority:** SDCL 27B-2-26(3), 36-9-28(10).

**Law Implemented:** SDCL 27B-2-26(3), 36-9-28(10).



## **CHAPTER 46:11:08**

### **CHOICES WAIVER SERVICES**

#### **Section**

46:11:08:01 Description of services.

46:11:08:02 Participant's records.

46:11:08:03 Alternative day services.

46:11:08:04 Notice of reduction of services.

46:11:08:05 Termination of waiver services – CSP initiated.

46:11:08:05.01 Discontinuation of services – Participant initiated.

46:11:08:06 Discharge summaries.

46:11:08:07 Waiting list.

**46:11:08:01. Description of services.** CHOICES waiver services shall be tailored to the preferences and priorities of each participant. Each participant must receive at least one of the following waiver services each month:

**(1) Service coordination to include:**

(a) Services that will assist a participant to gain access to the waiver and other Medicaid services;

(b) Services that will assist a participant to gain access to needed medical, social, and other needed services regardless of funding source;

(c) Development of initial ISP and review with the entire team annually thereafter;

(d) Initiation and oversight of any assessments and reassessments necessary to review and update the participant's ISP;

(e) Formulation and preparation of training, treatment, and therapy programs, monitoring the implementation of the programs, and modification of the programs when necessary;

(f) Quarterly ISP assessment pursuant to § 46:11:05:05.01 of the services included in the participant's ISP; and

(g) Initiation and oversight of the assessment and reassessment of the participant's level of care; or

(2) Day habilitation to include:

a) Assistance with acquisition, retention, or improvement in:

(i) Self-help;

(ii) Socialization;

(iii) Adaptive and safety skills;

(iv) Attending to task and task completion;

(v) Problem solving;

(vi) Communication skills;

(vii) Gross and fine motor skills; and

(viii) Reduction of problem behavior that takes place in a residential or non-residential setting;

(b) Services not limited to fixed site facilities;

(c) Services focused on enabling the participant to attain or maintain their maximum functional level;

(d) Services which may be provided in day activity, work activity, or sheltered workshop settings, operated by a provider; and

(e) Services which do not include production of goods or services, nor compensation for participants that is consequential; or

(3) Prevocational to include:

(a) Services that prepare a participant for paid or unpaid employment including teaching such concepts as:

(i) Compliance;

(ii) Attendance;

(iii) Task completion;

(iv) Problem solving; and

(v) Safety; and

(b) Services that are directed toward habilitation rather than explicit employment objectives and may include enclaves and work crews; or

(4) Residential habilitation to include:

(a) Services provided to a participant living in their own home, including those living with other family members; and

(b) Assistance with acquisition, retention, or improvement in:

(i) Activities of daily living;

(ii) Food preparation;

(iii) Money management;

(iv) Safety skills; and

(v) Social and adaptive skills necessary to enable the participant to reside in a non-institutional setting; or

(5) Supported employment to include services that are intensive with ongoing supports which enable the participant for whom competitive employment, at or above the minimum wage, is unlikely absent the provision of supports and who, because of their disabilities, need supports to perform in a regular work setting; or

(6) Medical equipment and drugs may include devices, controls, or appliances, specified in the ISP which enable a participant to increase the participant's ability to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live; or

(7) Nursing services limited to those nursing services which are not available under the Medicaid State Plan and are limited to:

(a) Screenings and assessments;

(b) Nursing diagnosis treatment;

(c) Staff training;

(d) Monitoring of medical care and related services;

(e) Policy and procedure development; and

(f) Review and response to medical emergencies, tuberculin tests, and phlebotomy for hepatitis screenings; or

(8) Other medically related services to include:

(a) Speech, hearing and language services;

(b) Direct therapies, treatment, and services limited to those not available under the Medicaid State Plan and provided by:

(i) Physicians;

(ii) Psychiatrists;

(iii) Physician assistants;

(iv) Speech, physical, or occupational therapists;

(v) Pharmacists;

(vi) Optometrists;

(vii) Dentists or dental hygienists;

(viii) Audiologists;

(ix) Podiatrists;

(x) Chiropractors; or

(xi) Dietitians;

(c) Services, therapies, and treatments provided directly to the participant as indicated in the ISP; and

(d) Evaluations, program design, direct services, staff training, policy and procedure review unless covered by the Medicaid State Plan.

**Source:**

**General Authority:** SDCL 27B-2-26(3)(9).

**Law Implemented:** SDCL 27B-2-26(3)(9).

**46:11:08:02. Participant's record.** Any entry in the participant's record shall be dated and signed and shall include information that is accurate, complete, timely, and relevant to the participant's need for services or supports.

A copy of the participant's record shall be in a format accessible to the participant. If abbreviations, symbols, acronyms, or jargon are used, a key shall be provided.

The participant's record shall be held in hard copy or electronic copy in a location accessible to the division and CSP staff and shall include:

(1) The participant's full name;

(2) The participant's social security number;

(3) The date of Home and Community-Based Service eligibility;

(4) The address of the participant at the time of entry into the division's service system and current address and phone number;

(5) A summary of health insurance, financial support, and entitlements;

(6) Any identification of family, guardian, conservator, or other interested persons, including current addresses and telephone numbers;



(7) The status of legal capacity;

(8) Any provider of services or supports including any subcontractors during the past two years;

(9) Any employment history, including a list of employers, dates of employment, and any position held;

(10) The current assessment reports;

(11) Any critical incident reports;

(12) The identity of the party responsible for managing the participant's funds;

(13) Any quarterly assessments pursuant to §46:11:05:05.01; and

(14) The participant's current ISP.

**Source:**

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26(2).

**46:11:08:03. Alternative day services.** Alternative day services shall be provided to a participant as needed. Alternative day services provide learning opportunities in natural community settings to improve or maintain a participant's abilities in:

(1) Communication;

(2) Socialization;

(3) Mobility;

(4) Health and physical fitness;

(5) Leisure and retirement or both; or

(6) Educational and functional skills.

Alternative day services do not replace existing residential services that would normally be a component of a participant's ISP as a residential service. Recreational or leisure activities

provided as an alternative service shall be therapeutic and in accordance with a specific goal listed in the ISP.

Alternative services shall be furnished as specified in the ISP and the ISP shall document how each participant's team determines the appropriateness for alternative services and the participant's wants, needs, goals, and objectives.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:08:04. Notice of reduction of services.** The CSP shall inform the participant in writing of the intent to reduce services and the participant's right to appeal the reduction of services to the division, ten calendar days prior to the date of the CSP initiated action. This notice must be documented and can only be waived if the participant or legal representative provides to the CSP a clear written statement signed by the participant or legal representative stating that the participant or the participant's legal representative agrees with the reduction of services. When reduction of services are being appealed services cannot be reduced until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

**Source:**

**General Authority:** SDCL 27B-2-26(3); 28-1-24.1.

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** Fair hearing, chapter 67:17:02.

**46:11:08:05. Termination of waiver services –CSP initiated.** At least 30 calendar days before a CSP terminates services to a participant, the CSP shall provide notice of its intention to

the division. The notice shall specify the CSP's reasons for the action. The CSP shall provide information to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian regarding the availability of other services in the community and the participant's right to appeal the decision to the division. The CSP shall have a policy that addresses notice of termination of services. Notice must be provided at least 30 calendar days prior to termination to the following:

(1) The participant, with accommodations made for people who have difficulties communicating;

(2) The participant's parent if the participant is under 18 years of age;

(3) The participant's guardian;

(4) All of the participant's ISP team; and

(5) The division.

When a termination is being appealed, the participant shall continue receiving services from the CSP until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**Cross-Reference:** ISP team -- Composition, § 46:11:05:01.

**46:11:08:05.01. Discontinuation of services – Participant initiated.** If a participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, chooses to discontinue services with the CSP, the CSP shall notify the division no later than the division's next business day after the participant requests discharge. The CSP shall provide

information to the participant, the participant's parent if the participant is under 18 years of age, the participant's guardian or advocate, if any, of other services available in the community. The CSP shall also provide counseling regarding funding, possible transfer, or other possible outcomes of the discontinuation of services.

The CSP shall send a discharge summary to the division pursuant to § 46:11:08:07.

**Source:**

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**46:11:08:06. Discharge summaries.** The CSP must inform the division of each discharge no later than the end of the division's following work day on a the form, DHS DD 751, provided by the division. The CSP must send a copy of the participant's discharge summary, DHS-DD-750, within 30 calendar days after discontinuation of services to the following:

- (1) The division;
- (2) The participant;
- (3) The participant's guardian, if any;
- (4) The participant's advocate, if any; and
- (5) The participant's parent if the participant is under 18 years of age.

**Source:** 22 SDR 104, effective February 13, 1996; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(4).

**Law Implemented:** SDCL 27B-2-26.

**46:11:08:07 Waiting list.** If a waiting list develops, the division shall assign a level of priority for applicants to the waiver. The first level is priority status, which is reserved for

individuals who are at significant risk. An individual at significant risk is one under any of the following circumstances:

- (1) Whose health, welfare, or safety is in jeopardy;
- (2) Who is at imminent risk of being institutionalized; or
- (3) Who is institutionalized.

Any other individual shall be placed in the second level, which is applicant status. An individual in priority status shall be placed at the top of the waiting list and receive services on a first come, first serve basis. An individual in applicant status shall receive services on a first come, first serve basis, but only after those in priority status.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**CHAPTER 46:11:09**

**FAMILY SUPPORT WAIVER SERVICES**

**Section**

46:11:09:01 Definitions.

46:11:09:02 Responsibilities of a CSP.

46:11:09:03 Criteria for designation as a qualified provider.

46:11:09:04 Responsibilities of a qualified provider.

46:11:09:05 Critical incident report -- Submission to the division.

46:11:09:06 Participant selection of a CSP or qualified provider.

46:11:09:07     Agency with choice model.

46:11:09:08     Notification to participant of providers, services, and rights.

46:11:09:09     Waiting list.

46:11:09:10     Description of services.

46:11:09:11     ISP.

46:11:09:12     Support plan for services.

46:11:09:13     Budget utilization information to support participant directed services.

46:11:09:14     Annual ISP meeting.

46:11:09:15     ISP review and modification.

46:11:09:16     Participant's records.

46:11:09:17     Confidentiality of participant records.

46:11:09:18     Transfer of participant records.

46:11:09:19     Review of CSP

46:11:09:20     Review of a qualified provider.

46:11:09:21     Statement of deficiencies and plan of correction.

46:11:09:22     Revocation of the provider agreement.

46:11:09:23     Rights of participants and parents or guardians.

46:11:09:24     Right of Appeal.

**46:11:09:01. Definitions.** Terms used in this chapter mean:

(1)"Companion care services," non-medical services geared toward developing a participant's independent living skills;

(2)"Consent," voluntary approval given in writing, orally, or implied by the action of a person with adequate information and sufficient understanding to comprehend the consequences of the decision;

(3) "Coordinator," an individual employed by a CSP meeting the requirements of this chapter, to assist participants who receive family support services in gaining access to needed family support and other available services, as well as needed medical, social, educational, and other services, regardless of the funding source for the services to which access is gained;

(4) "Employer of record," any CSP providing family support services pursuant to this chapter and who is responsible for officially hiring the employee, processing employment forms, providing training to program participants and employees if requested, and managing the payroll function;

(5) "Family," a person or a group of people who are related to the participant by blood, marriage, or adoption, or define themselves as a family based upon bonds of affection, and who currently share a household with the participant or has, in the past, shared a household with the participant. For the purposes of this subdivision, the phrase, bonds of affection, means enduring ties that do not depend on the existence of an economic relationship and the relationship is expected to endure over time;

(6) "Goals," outcomes generally expected to be achieved by a participant for each service received, stated in measurable terms so that their attainment can be determined, and should be attained within five years. Goals are developed from an evaluation of the participant's present performance, abilities, and desires;

(7) "Home and community-based services" or "HCBS," the services contained in this chapter that are provided by a CSP or qualified provider meeting the requirements of this chapter, to a participant who, without these services, would require placement in an intermediate care facility for individuals with intellectual disabilities;

(8) "Individualized service plan" or "ISP," a single plan for the provision of services and supports to the participant that is directed by the participant, is outcome-oriented, and is intended to specify all needed assessments, supports, and training pursuant to § 46:11:09:14;

(9) "Managing employer," any participant receiving services pursuant to this chapter or the participant's guardian or family who is responsible for recruitment, hiring recommendations, dismissal determinations, training of employees, determining what tasks are to be performed, and submitting and approving employees' timecards;

(10) "Participant-directed services," a service arrangement whereby the participant may choose any individual the participant desires to assist with the design of services, the selection of service providers, and decisions of how the authorized funding is to be spent based on the needs in the participant's ISP;

(11) "Personal care services," services that enable the participant to accomplish tasks that the participant would normally do if the participant did not have a disability;



(12) "Qualified provider," one that enters into an agreement with the division to provide personal care 1, personal care 2, respite care, companion care, or supported employment services to a participant;

(13) "Services," a system of formalized supports, generic or specialized;

(14) "Sub-contractor," an individual or organization that enters into an agreement with a participant and an OHCDs to provide services to a the participant;

(15) "Supported employment," services directed towards assisting participants to obtain and retain paid employment in community settings.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:09:02. Responsibilities of a CSP.** A CSP providing services under this chapter has the following responsibilities:

(1) Ensure any employee providing coordination meet the following qualifications:

(a) Be at least 21 years of age;

(b) Pass a criminal background check;

(c) Be able to communicate effectively verbally and in writing;

(d) Be able to follow written or verbal instructions provided by the participant,

guardian, advocate, or family member of the participant;

(e) Have the abilities or skills necessary to meet the participant's needs as outlined in the ISP;

(f) Have a degree in the field of human services, social work, sociology, psychology, or related field experience or be a parent of a child with a developmental disability;

(g) Be able to effectively utilize database and word processing computer software and the Internet;

(h) Successfully complete a minimum of 40 hours of training provided by the division in the following areas:

(i) Administration of the HCBS family support waiver;

(ii) Individual service plan development;

(iii) Available services;

(iv) Defining, identifying, and reporting abuse, neglect, and exploitation;

(v) Individual education program pursuant to chapter 24:05:27;

(vi) Developmental disability eligibility criteria;

(vii) ICAP training provided by the division;

(i) Have the ability to work independently upon completion of training; and

(2) Have primary responsibility for preparing the participant's annual ISP and modifications as needed;

(3) Ensure the health and safety of each participant receiving services according to this chapter;

(4) Ensure that services provided are consistent with the participant's ISP and the provider agreement with the division;

(5) Serve as an employer of record and a co-employer when the agency with choice model pursuant to § 46:11:09:08 is used;

- (6) Monitor and document the effectiveness of the implementation of the ISP on a quarterly basis;
- (7) Provide participants and their families with a written list of their rights in an accessible format or language that is easy to understand upon initiation of services and annually thereafter;
- (8) Submit reports and comply with all record-keeping required by the division;
- (9) Submit claims to the Department of Social Services for reimbursement;
- (10) Submit critical incident reports pursuant to §46:11-09:06;
- (11) Ensure that any employee or subcontractor adhere to the division's qualifications for providing services pursuant to this chapter;
- (12) Maintain, transfer, and retain records pursuant to this chapter including all information related to invoicing; and
- (13) Have policies approved by the division in the following areas and ensure that any employee or subcontractor is provided adequate training on each of the following policies:
- (a) Confidentiality;
  - (b) Drug-free workplace and drug screening;
  - (c) Grievance;
  - (d) Sexual harassment;
  - (e) Abuse, neglect, or exploitation reporting;
  - (f) Safety;
  - (g) Universal precautions;
  - (h) Proper lifting techniques and body mechanics, back safety, and risk factors for back injury.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**Cross-Reference:** Individual educational program, chapter 24:05:07.

**46:11:09:03. Criteria for designation as a qualified provider.** A qualified provider providing personal care, respite care, companion care, or supported employment under the provisions of this chapter must meet the following criteria:

- (1) Have a signed provider agreement with the Department of Social Services;
- (2) Obtain a signed provider agreement with the department; and
- (3) Must meet the following qualifications:
  - (a) Any employee must meet the age requirement for each service specified;
  - (b) Any employee must pass a criminal background check;
  - (c) Any employee must be able to follow written or verbal instructions provided by the participant, or the participant's family member or guardian or advocate, if any;
  - (d) Any employee must have the abilities or skills necessary as determined by the participant to meet the participant's needs as outlined in the ISP; and
  - (e) Have policies in the following areas:
    - (i) Confidentiality;
    - (ii) Drug-free workplace;
    - (iii) Grievance;
    - (iv) Emergency procedures and back-up plan;
    - (v) Sexual harassment;
    - (vi) Abuse, neglect, exploitation, and incident reporting;
    - (vii) Safety;
    - (viii) Universal precautions;
    - (vix) Proper lifting techniques and body mechanics, back safety, and risk factors

for back injury;

(x) Termination and notice requirements; and

(xi) Payment and billing.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**46:11:09:04. Responsibilities of a qualified provider.** A qualified provider has the following responsibilities:

(1) Comply with state and federal worker's compensation requirements;

(2) Comply with division qualifications set forth in this chapter for providing services;

(3) Submit reports and comply with all record-keeping required by the division;

(4) Submit claims to the Department of Social Services for reimbursement;

(5) Maintain, transfer, and retain records pursuant to this chapter, including all information related to invoicing;

(6) Ensure the health and safety of each participant receiving services according to this chapter;

(7) Receive training from the participant or guardian, advocate, or family member of the participant in performance of any service outlined in the ISP; and

(8) Submit critical incident reports pursuant to § 46:11:09:06.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**46:11:09:05. Critical incident report -- Submission to the division.** A CSP or qualified provider, providing service under this chapter, shall give verbal notice of any critical incident

involving a participant to the division no later than the end of the division's next business day or the CSP or qualified provider's administrative business day whichever occurs first from the time the CSP or qualified provider becomes aware of the incident. The CSP or qualified provider shall submit a written critical incident report on a form provided by the division. The report shall be submitted to the division within seven calendar days after the verbal notice. A report shall be submitted in the following critical instances:

- (1) Death;
- (2) Life-threatening illness or injury;
- (3) Alleged instances of abuse, neglect, or exploitation against or by any participant;
- (4) Changes in health or behavior that may jeopardize continued services;
- (5) Illness or injury that resulted from unsafe or unsanitary conditions; or
- (6) Any illegal activity that involves a participant.

The report must contain a description of the incident, specifying what happened, when it happened, and where it happened. The report must be dated and include the name of the individual submitting the report.

The coordinator shall notify the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, that a critical incident report has been submitted and the reason why unless the parent or guardian is accused of the incident.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(4).

**46:11:09:06. Participant selection of a CSP or qualified provider.** The participant may choose either a CSP or qualified provider for delivery of services.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented: SDCL 27B-2-26(4).**

**46:11:09:07. Agency with choice model.** The agency with choice model is a co-employment arrangement between a CSP and a participant in which the CSP is the employer of record and the participant is the managing employer. The participant and the participant's family or guardian may participate in the recruitment, interviewing, selection, training, and supervising of employees who will be providing the service. The CSP does the actual hiring. The agency with choice model is limited to the following waiver services:

- (1) Personal care 1;
- (2) Companion care;
- (3) Respite care; and
- (4) Supported employment.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).**

**46:11:09:08. Notification to participant of providers, services, and rights.** The participant or the participant's parent or guardian shall be provided with the following:

- (1) A list of CSPs;
- (2) A list of OHCDs qualified providers;
- (3) A list of HCBS waiver services;
- (4) Information regarding the appeal process; and
- (5) Provided with contact information to request a fair hearing upon initiation of services

and annually thereafter.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:09. Waiting list.** If a waiting list develops, the division shall assign a level of priority for applicants to the waiver. The first level is priority status, which is reserved for individuals who are at significant risk. An individual at significant risk is one under any of the following circumstances:

- (1) Whose health, welfare, or safety is in jeopardy;
- (2) Who is at imminent risk of being institutionalized; or
- (3) Who is institutionalized.

Any other individual shall be placed in the second level, which is applicant status. An individual in priority status shall be placed at the top of the waiting list and receive services on a first come, first serve basis. An individual in applicant status shall receive services on a first come, first serve basis, but only after those in priority status.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:10. Description of services.** Any family support service shall be participant-directed to the extent the participant and the participant's family or guardian chooses and can include budget and employer authority. Budget and employer authority means the participant and the participant's family can control their own budget for services and can recommend for hire individuals to the CSP or qualified provider.



Family support services shall be specifically tailored to the competencies, interests, preferences, and needs of the participant and the participant's family or guardian and respectful of the cultural and ethnic beliefs, traditions, personal values, and lifestyle of the family.

The participant must receive at least one of the following waiver services each month:

(1) Family support coordination services to include:

(a) Coordination of services that will assist a participant to gain access to needed medical, social, and other needed services;

(b) On-going monitoring of the services; and

(c) Initiating and overseeing the assessment and reassessment of the participant's level of care;

(2) Personal care 1 services to include:

(a) Assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(b) Assistance with the preparation of meals, not to include the cost of the food itself; and

(c) Assistance with housekeeping chores such as making the bed, dusting, and vacuuming;

(3) Personal care 2 services to include assistance with basic living skills such as eating, drinking, toileting, dressing, and personal hygiene;

(4) Respite care services to include short term assistance, in or out of a participant's home for the temporary relief and support of the family;

(5) Supported employment services to include:

(a) Improving or maintaining skills in employment activities;

(b) Enhancing social and personal development or well-being within the context of vocational goals; and

(c) Providing consultation services, as needed by each participant;

(6) Companion care services to include:

(a) Assistance with or supervision of laundry, shopping, or meal preparation, not to include the cost of the food;

(b) Assistance or supervision with the acquisition, retention, or improvement in self-help, socialization, and adaptive skills; and

(c) Assistance with participation in community events to develop appropriate socialization skills to become integrated into the community;

(7) Environmental accessibility adaptation services to include adaptations to the home owned by the participant or the participant's family that are a direct benefit to the participant to ensure access, health, and safety. Adaptations that add to the total square footage of the home are excluded from this benefit. For all purchases over \$1,000, the participant must intend to reside in the home for more than two years. Adaptations to a property in which the participant will reside for less than two years are subject to a prior authorization process administered by the division;

(8) Nutritional supplements;

(9) Specialized medical adaptive equipment and supplies to include devices, controls, or appliances that enable participants to increase their abilities to perform activities of daily living or perceive, control, or communicate with the environment in which they live; or

(10) Vehicle modification to include adaptations to vehicles to ensure the participant's safety and access to the community.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3).

**46:11:09:11. ISP.** For services under this chapter the coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP

must be completed within 30 calendar days of initial contact between the participant and the coordinator. The ISP shall include:

(1) Measurable goals for the completion of outcomes documenting the use of a minimum of one person centered thinking tool;

(2) Any services or supports to be provided to the participant;

(3) Start dates to address goals;

(4) Implementation strategies to address goals;

(5) The amount, frequency, and duration of each service;

(6) Individuals responsible for providing the supports, implementation, and monitoring of the ISP;

(7) An emergency back-up plan developed to address concerns identified through completed assessments;

(8) Documentation indicating that the participant or the participant's parent or guardian has been involved in, informed of, and agrees with the plan; and

(9) A description of the process for appeal pursuant to § 46:11:09:24.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:12. Support plan for services.** Each participant that receives respite care, personal care 1, personal care 2, supported employment, or companion care services will have a support plan developed with the assistance of the coordinator. The purpose of the support plan is to provide an individualized description of the participant's services needs and payment structure for the service in order to train each provider. The support plan shall include:

(1) The scope, frequency, duration, and cost of the services to be provided;

(2) The ISP goal that will be addressed by the service provider; and

(3) The signature of the participant, or the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, the service provider and the coordinator.

The coordinator will assist the participant to review and update the support plan for services at least annually or more often if the needs of the participant change.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:13. Budget utilization information to support participant directed services.**

A budget update that details what has been utilized regarding supports and services as outlined in the ISP shall be provided by the coordinator and reviewed with the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, at least annually or more often as needed.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(2)(9).

**46:11:09:14. Annual ISP meeting.** The coordinator shall convene a meeting of the participant and the participant's ISP team to review the ISP at least annually or more often as needed and modify the ISP as appropriate.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:15. ISP review and modification.** The coordinator shall monitor and discuss the implementation of the ISP quarterly with the participant and the participant's family or guardian and document the review in quarterly progress notes. The quarterly progress notes shall include discussion of the participant's progress toward each goal, outcome, and objective and of any events pertinent to the participant's growth and development, including behavioral incidents and significant activities and events. The participant or any member of the ISP team may request a review or modification of the ISP at any time.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(3)(4)(9).

**46:11:09:16. Participant's records.** Any entry in the participant's record shall be dated and signed and shall include information which is accurate, complete, timely, and relevant to the participant's needs for services or supports.

A copy of the participant's paper or electronic record shall be in a format accessible to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any. If abbreviations and symbols, acronyms, or jargon are used, a key shall be provided.

The participant's paper or electronic record shall be held in a location accessible to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and the division and CSP staff and shall include:

- (1) The participant's full name;
- (2) The participant's social security number;
- (3) The date of HCBS eligibility;
- (4) The current address and phone number of the participant;

- (5) A summary of health insurance, financial support, and other entitlements;
- (6) Any identification of family, guardian, conservator, and other interested persons, including current addresses and telephone numbers;
- (7) The status of legal capacity;
- (8) Documentation of all providers of services or supports including qualified providers, OHCDs subcontractors, and employees employed through the agency with choice model, during the past two years;
- (9) Any employment history, including a list of employers, dates of employment, and any position held;
- (10) The current assessment reports;
- (11) Any critical incident reports;
- (12) The identity of the responsible party for the management of participant funds;
- (13) The quarterly progress notes;
- (14) The participant's current ISP; and
- (15) Any support plan for services.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(2).

**46:11:09:17. Confidentiality of participant records.** Each qualified provider shall have a policy regarding the confidentiality of participant information to ensure the records, paper or electronic copy, are protected against loss, tampering, or unauthorized disclosure of information in accordance with 45 C.F.R., Part 160 and 164 (October 1, 2009) and the provisions of this chapter.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented: SDCL 27B-2-26(2)(4)(9).**

**46:11:09:18. Transfer of participant records.** If a participant receiving services under this chapter transfers from one CSP to another CSP, the transferring entity shall deliver a copy of the participant's record to the new entity upon obtaining consent by the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any. A copy shall be made available to the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented: SDCL 27B-2-26(2)(4)(9).**

**46:11:09:19. Review of a CSP.** A satisfaction survey of participants receiving services under this chapter shall be conducted in conjunction with the biennial review.

The billing review conducted pursuant to § 46:11:02:09 shall also include a random sample of claims of participants receiving services under this chapter to ensure and validate the accuracy of record keeping, supporting documentation, and claim submission. The department may conduct a review at any time upon receipt of a complaint.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented: SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).**

**46:11:09:20. Review of a qualified provider.** The division shall conduct an annual review through a random sample of at least ten percent of participants served by each qualified provider including all or part of any services, finances, or operations of the qualified provider.

The division may also conduct a review upon receipt of any complaint filed with the division regarding the provision of services by a qualified provider.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**46:11:09:21. Statement of deficiencies and plan of correction.** If a qualified provider with a family support provider agreement fails to be in compliance, a statement of deficiencies noting areas of noncompliance shall be issued by the division within 30 calendar days following the survey. The qualified provider must submit a plan of correction to the division within 30 calendar days of receipt of the statement of deficiencies.

The plan of correction shall detail the action to be taken to correct the deficiencies and the date by which the corrections will be made. The plan of correction is subject to acceptance or rejection in whole or in part by the division. The division shall notify the qualified provider within 30 calendar days of receipt of the plan of correction of its decision regarding approval of the plan of correction and status of the provider agreement.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**46:11:09:22. Revocation of the provider agreement.** The division may revoke a provider agreement if the CSP or qualified provider fails to meet the requirements of this chapter.

**Source:**

**General Authority:** SDCL 27B-2-26.



**Law Implemented:** SDCL 27B-2-26(1)(2)(3)(4)(7)(9)(10).

**46:11:09:23. Rights of participants and parents or guardians.** A qualified provider providing services under this chapter shall adhere to the rights of a participant and parents or guardians listed in § 46:11:03:00.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26(4)(9).

**46:11:09:24. Right of appeal.** A participant or a participant's parent or guardian may appeal ineligibility, termination, or reduction of services by following the process in § 67:54:09:24. The participant will be provided with information on how to obtain assistance from an employee of the state's designated protection and advocacy system. Assistance in contacting the state's designated protection and advocacy system shall be provided to the participant if needed. When a participant's waiver services are reduced or terminated , any time during the ISP year or the annual meeting, the Coordinator will document the decision. Documentation must include:

- (1) The services being reduced or terminated;
- (2) The reason for the reduction or termination; and
- (3) The right to appeal to the division was provided to the participant or the participant's parent or guardian.

When reduction or termination of services are being appealed, services cannot be reduced or terminated until a decision is reached after a hearing pursuant to SDCL chapter 1-26.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26.

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(9).

**Cross-Reference:**

## **CHAPTER 46:11:10**

### **FAMILY SUPPORT SERVICES**

#### **Section**

46:11:10:01 Definitions.

46:11:10:02 Local family support program.

46:11:10:03 ISP.

46:11:10:04 Local family support provider.

46:11:10:05 Local family support eligibility.

46:11:10:06 Statewide family support program.

46:11:10:07 Statewide family support eligibility.

46:11:10:08 Statewide family support notice of ineligibility.

46:11:10:09 Appeal of ineligibility of statewide family support services.

46:11:10:10 Services and supports.

46:11:10:11 Prior authorization required.

46:11:10:12 Funding availability.

46:11:10:13 Non-covered expenses.

46:11:10:14 Safety assurance.

46:11:10:15 Discontinuation of services or benefits.

46:11:10:16 Appeal of ineligibility or termination of local family support services.

**46:11:10:01. Definitions.** Terms used in this chapter mean:

- (1) "Coordinator," an individual employed by a CSP who provides service coordination through an ISP required in § 46:11:10:03;
- (2) "Home," the participant's residence where family support services are provided;
- (3) "Home modifications," remodeling or refurbishing of a home owned by the participant or the participant's family to increase accessibility, to enhance adaptability for that participant, to facilitate the participant's independence, or to allow a participant to remain in that home in lieu of an alternative living arrangement;
- (4) "Individualized service plan" or "ISP," a written plan of services or supports for a participant, which is developed, implemented, reviewed, and modified according to the provisions of this chapter;
- (5) "Parent," a participant's biological, adoptive, or stepparent, or any relative who acts in a parental capacity on an extended or full-time basis;
- (6) "Provider," a CSP that provides services or other entity that provides supplies under the provisions of this chapter.

**Source:**

**General Authority: SDCL 27B-2-26.**

**Law Implemented:** SDCL 27B-2-26.

**46:11:10:02. Local family support program.** A local family support program provides services, supports, and other assistance through a coordinator to a participant who has a developmental disability and lives in a home. Services, supports, and other assistance available under the local family support program include:

- (1) Providing information and referral to other available resources as needed;
- (2) Providing service coordination;
- (3) Providing advocacy services; and
- (4) Providing financial assistance to purchase supports and services that are included in the ISP and approved by the division.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:11:10:03. ISP.** The coordinator shall make initial contact with the participant within 14 calendar days of being selected by the participant. The ISP must be completed within 30 calendar days of initial contact between the participant and the coordinator. The ISP must identify and prioritize the participant's needs and must be developed with the participant, if able, the participant's parent or parents, if the participant is under 18 years of age, or the participant's guardian, if any. The coordinator shall review the ISP quarterly with the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and document the outcome of the review and any recommendations regarding the status of the ISP. The ISP shall include:

- (1) The type of services to be furnished;

(2) The amount, the frequency, and duration of each service;

(3) Who is responsible to provide the service; and

(4) At least one goal and any services related to attainment of that goal.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:11:10:04. Local family support provider.** A local family support provider must be a CSP and have a provider agreement with the division.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:11:10:05. Local family support eligibility.** An individual must meet the following criteria to be eligible to receive services under the local family support program:

(1) The individual must be a resident of South Dakota;

(2) The individual must be under the age of 22 and have a developmental disability as defined in SDCL 27B-1-18 or be a child birth through two years of age who has been identified by the Department of Education as needing prolonged assistance as defined in § 24:05:24.01:15; and

(3) If the individual is under 18 years of age, the individual must be living in a home with a parent as defined in subdivision 46:11:10:01(5) or a guardian; and

(4) The home may not have more than four non-related individuals living in that home who are receiving family support services.

Participant eligibility for the local family support program shall be reviewed by the coordinator at least annually or upon receipt of any documentation which could potentially affect eligibility.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**Cross-Reference:** Prolonged assistance defined, § 24:05:24.01:15.

**46:11:10:06. Statewide family support program.** The statewide family support program is available to a family who has a child who meets eligibility criteria as defined in §46:11:10:07 and who is not receiving services from a local family support program, or a CSP. The statewide program does not provide service coordination to families. The division determines eligibility and authorizes payment for items and supplies that are requested by eligible families.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:11:10:07. Statewide family support eligibility.** An individual must meet the following criteria to be eligible to receive items and services under the statewide family support program:

- (1) The individual must be a resident of South Dakota;
- (2) The individual must be under the age of 22 and has a developmental disability as defined in SDCL 27B-1-18 or be a child birth through two years of age who has been identified by the Department of Education as a child needing prolonged assistance as defined in § 24:05:24.01:15; and

(3) If the individual is under 18 years of age, the individual must be living in a home with a parent or a guardian.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**Cross-Reference:** Prolonged assistance defined, § 24:05:24.01:15.

**46:11:10:08. Statewide family support notice of ineligibility.** The division shall determine eligibility for any individual applying for the statewide family support program within 14 calendar days of receipt of the application.

The division shall send a written notice to the applicant or the applicant's parent, if the applicant is under 18 years of age, or guardian informing the applicant of the results of the eligibility determination. If the applicant is determined to be ineligible, the notice shall state the reason the applicant is not eligible and the process for appealing the decision pursuant to §46:11:10:09.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**46:11:10:09. Appeal of ineligibility of statewide family support services.** An individual, an individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, may appeal the Statewide Family Support program manager's decision regarding ineligibility of services to the division.

An appeal shall be made in writing to the division within 30 calendar days of receipt of the notice regarding ineligibility. The division shall provide a determination within 30 calendar days of receipt of request for appeal.

An individual, an individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, dissatisfied with the division's determination regarding ineligibility of services may appeal the division's decision.

An appeal shall be made in writing to the department secretary within 30 calendar days of receipt of the notice regarding ineligibility. The department secretary shall provide a determination within 30 calendar days of receipt of request for appeal.

An individual, an individual's parent, if the individual is under 18 years of age, or an individual's guardian, if any, dissatisfied with the department secretary's determination regarding ineligibility of services may request a fair hearing by notifying the department in writing within 30 calendar days of receipt of the department's decision. A fair hearing shall be conducted pursuant to the provisions of SDCL chapter 1-26.

The department may not pay for legal fees for representing the individual, the individual's parent, or guardian at a fair hearing pursuant to this section.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**46:11:10:10. Services and supports.** Services and supports are based on each participant's needs as identified through an assessment process and must be agreed to by the participant, the participant's parent if the participant is under 18 years of age, or the participant's guardian, if any, and the coordinator. The services and supports provided by the local family



support program must be documented in the participant's ISP and submitted to the division for approval.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:11:10:11. Prior authorization required.** The coordinator must approve the purchase of any services or supports covered under this chapter for the local family support program before the services or supports are purchased.

The division must approve the purchase of any items or supplies covered under this chapter for the statewide family support program before the items or supplies are purchased.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:11:10:12. Funding availability.** Any services provided under this chapter are contingent upon availability of funds. Any individual under 22 years of age determined eligible for local family support program services, but due to a lack of available funds cannot be served, shall be referred to the statewide family support program.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:11:10:13. Non-covered expenses.** The following items are not covered:

(1) Incontinence supplies for a child under 2 1/2 years of age;

(2) Vehicles;

(3) Purchases made without the prior approval of the coordinator for the local family support program or the division for the statewide family support program; and

(4) Any services, items, or supplies eligible for payment under another payment source.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:11:10:14. Safety assurance.** The coordinator must assess that services funded by the local family support program are provided in a safe environment. The division shall provide an internal checklist for home and community resources and a checklist of safety guidelines. The coordinator shall complete the internal checklist and the safety checklist upon initiation of services and annually thereafter. The coordinator shall provide information to the participant and the participant's family when safety concerns are identified. The coordinator shall monitor actions taken.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(4)(7).

**46:11:10:15. Termination of services or benefits.** Services or payment of items or supplies may be terminated if one of the following occurs:

(1) The participant no longer meets eligibility criteria pursuant to § 46:11:10:05 or 46:11:10:07;

(2) A misuse of funds by the participant or the participant's parent or guardian is substantiated;

(3) There is a request to terminate services by the participant or the participant's parent or guardian; or

(4) Funding for the local family support or statewide family support programs become unavailable.

If services or benefits are going to be terminated, the coordinator for the local family support program or the division for the statewide family support program shall provide a written notice to the participant or the participant's parent or guardian, ten calendar days before the service or benefits are to be discontinued. The notice shall contain the reason for the discontinuance and the process for appeal pursuant to § 46:11:10:09 for statewide family support or § 46:11:10:16 for local family support.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**46:11:10:16. Appeal of ineligibility or termination of local family support services.** A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, may appeal the agency's decision regarding ineligibility or termination of services to the division.

An appeal must be made in writing to the division within 30 calendar days of receipt of the notice regarding ineligibility or termination. The division shall provide a determination within 30 calendar days of receipt of request for appeal.

A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, dissatisfied with the division's determination regarding ineligibility or termination of services may appeal the division's decision.

An appeal must be made in writing to the department secretary within 30 calendar days of receipt of the notice regarding ineligibility or termination. The department secretary shall provide a determination within 30 calendar days of receipt of request for appeal.

A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, dissatisfied with the department secretary's determination may request a fair hearing by notifying the department in writing within 30 calendar days of receipt of the department's decision. A fair hearing shall be conducted pursuant to the provisions of SDCL chapter 1-26.

When termination is being appealed the participant shall continue receiving services from the local family support program until a final decision is reached pursuant to SDCL chapter 1-26.

The department may not pay for legal fees for representing the individual the individual's parent or guardian at a fair hearing pursuant to this section.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

## **CHAPTER 46:11:11**

### **COMMUNITY TRAINING SERVICES**

#### Section

46:11:11:01 Definitions.

46:11:11:02 Community training services.

46:11:11:03 Eligibility.

46:11:11:04 Unearned income defined.

46:11:11:05 Payment for CTS.

46:11:11:06 Special emergency provision.

46:11:11:07 Appeal of ineligibility of services.

#### **46:11:11:01. Definitions.** Terms used in this chapter mean:

(1) "Earned income," cash or in-kind payments consisting of wages or net earnings from self-employment;

(2) "Gross income," sums of money received from both earned and unearned income before deductions.

#### **Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:02. Community training services.** Community training services, or CTS, are those services a participant may receive during a given week. These services include:

- (1) Prevocational training;
- (2) Community living training; or
- (3) Expanded follow-along services.

**Source:**

**General Authority:** SDCL 27B-2-26(3).

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:03. Eligibility.** To be eligible to receive CTS a participant shall meet the following criteria:

- (1) Have a developmental disability as defined in SDCL 27B-1-18; and
- (2) Be at least 16 years of age; or
- (3) If 21 years of age or younger, may not be eligible for special education services pursuant to chapter 24:05:24.01; and
- (4) Have three or more substantial functional limitations determined by an ICAP; and
- (5) Meet the income guidelines in § 46:11:11:05; or
- (6) Meet the criteria for a special emergency provision pursuant to § 46:11:11:06.

An ICAP must be completed initially to determine eligibility and annually thereafter to determine continued eligibility.

**Source:**

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:04. Unearned income defined.** Unearned income is all income that is not earned. It may be received in cash or in kind. The following are types of unearned income:

(1) Annuities, pensions, and other periodic payments, such as private pensions, social security benefits, disability benefits, veterans' benefits, workers' compensation, railroad retirement annuities, and unemployment insurance benefits;

(2) Alimony and child support payments;

(3) Dividends, interest, and royalties;

(4) Death benefits; and

(5) Gifts and inheritances.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:05. Payment for CTS.** CTS shall be provided cost-free to eligible participants whose gross income is less than 185 percent of the federal poverty level or are a recipient of or eligible for Supplemental Security Income. If the participant's income equals or exceeds 185 percent of the federal poverty level, the participant shall pay 100 percent of the costs of services received.

**Source**

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:06. Special emergency provision.** To be eligible to receive a special emergency provision a participant shall meet the following criteria:

(1) Have an income that falls below 115 percent of the state median income;

(2) Be at imminent risk of hospitalization or require more comprehensive and costly supports; and

(3) Have explored and exhausted all other available options.

**Source:**

**General Authority:** SDCL 27B-2-26(2).

**Law Implemented:** SDCL 27B-2-26.

**46:11:11:07: Appeal of ineligibility of services.** A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, may appeal the agency's decision regarding ineligibility of services to the division.

An appeal shall be made in writing to the division within 30 calendar days of receipt of the notice regarding ineligibility. The division shall provide a determination within 30 calendar days of receipt of request for appeal.

A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, dissatisfied with the division's determination regarding ineligibility of services may appeal the division's decision.

An appeal shall be made in writing to the department secretary within 30 calendar days of receipt of the notice regarding ineligibility. The department secretary shall provide a determination within 30 calendar days of receipt of request for appeal.

A participant, a participant's parent if the participant is under 18 years of age, or a participant's guardian, if any, dissatisfied with the department secretary's determination may request a fair hearing by notifying the department in writing within 30 calendar days of receipt of the department's decision. A fair hearing shall be conducted pursuant to the provisions of SDCL chapter 1-26.

The department may not pay for legal fees for representing the individual the individual's parent or guardian at a fair hearing pursuant to this section.

**Source:**



**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**CHAPTER 46:11:12**  
**RESPIRE CARE SERVICES**

**Section**

46:11:12:01 Definitions.

46:11:12:02 Eligibility.

46:11:12:03 Application and approval.

46:11:12:04 Documentation required.

46:11:12:05 Notice of ineligibility.

46:11:12:06 Providers.

46:11:12:07 Mid-year application.

46:11:12:08 Extraordinary respite care funding.

46:11:12:09 Recovery of overpayments.

46:11:12:10 Termination of services.

46:11:12:11 Appeal of ineligibility or termination.

46:11:12:12 Time and place of hearing -- Time extension.

**46:11:12:01. Definitions.** Terms used in this chapter mean:

(1) "Respite care," services provided to families of a child or adult participant for a short time because of the absence of or need for relief of the family member normally providing the care.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:02. Eligibility.** A family residing in South Dakota may be eligible for respite care if the family has a child or adult family member who lives with a parent or other family member on a full-time basis and one of the following apply to the child or adult family member:

- (1) Is a child or an adult and has a developmental disability as defined in SDCL 27B-1-18;
- (2) Is three years of age or younger and has a developmental delay;
- (3) Is a child and has a serious emotional disturbance as defined in SDCL 27A-15-1.1;
- (4) Is an adult and has a severe and persistent mental illness as defined in subdivision 46:20:18:01(22);

- (5) Is a child and has a chronic medical condition;
- (6) Is a child and a member of a post-adoptive family; or
- (7) Is a child or an adult and has a traumatic brain injury.

An adult or child eligible for family support waiver services is not eligible for services under this chapter.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:03. Application and approval.** A family who wishes to participate in the respite care program must submit a signed, completed application to the division on the form provided by the division. If the application is approved, Information and Request for Payment forms shall be sent to the family.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:04. Documentation required.** If the individual has a developmental disability, developmental delay, traumatic brain injury, or chronic medical condition, a copy of a document containing the diagnosis and name of the physician, psychiatrist or psychologist issuing the diagnosis must be submitted with the application.

If the individual is a child with a serious emotional disturbance or if the individual is an adult with a severe and persistent mental illness, a Mental Health Summary Evaluation form as provided by the division must be submitted with the application.

If a post-adoptive family is seeking services, a copy of the court order of adoption must be submitted with the completed application.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:05. Notice of ineligibility.** If the division determines that a family is ineligible, the division shall notify the family in writing of the reason for ineligibility within 60 calendar days upon receipt of the completed application. The notice shall include the process of appeal pursuant to § 46:11:12:11.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(6).

**46:11:12:06. Providers.** Any family participating in the respite care program is responsible for recruiting, screening, selecting, and training respite care providers.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:07. Mid-year application.** An eligible family that applies after December 1 may receive authorization for up to one-half the current annual amount allotted to that family.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:08. Extraordinary respite care funding.** After the first six months of the state's fiscal year, additional respite care funding may be authorized for a family after the annual amount allotted to that family has been expended. If funding is available, a family may receive one additional allotment up to the original amount in the following situations:

- (1) The primary caretaker is hospitalized;
- (2) A natural disaster has occurred at or near the family's home;
- (3) The eligible child or eligible adult has developed an unexpected illness or has been hospitalized; or
- (4) The family will suffer a significant hardship that can be alleviated by respite care.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:09. Recovery of overpayments.** Any respite care payment made as a result of an agency error, client error, or fraud is considered an overpayment and is subject to recovery by the division.

**Source:**

**General Authority:** SDCL 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-26(6).

**46:11:12:10. Termination of services.** Services shall terminate when:

(1) The family no longer meets the eligibility criteria as defined in § 46:11:12:02;

(2) A misuse of funds is substantiated; or

(3) There is a request by the family or the participant's guardian to terminate services.

If termination occurs pursuant to subdivisions (1) and (2) of this section, the division shall provide a written notice of the reason for termination to the family ten calendar days prior to the termination of services. The notice shall include the process of appeal pursuant to § 46:11:12:11.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(6).

**46:11:12:11. Appeal of ineligibility or termination.** A family may appeal the division's decision regarding ineligibility or termination of services by requesting a fair hearing pursuant to SDCL 1-26 by notifying the department in writing within 30 calendar days of receipt of the division's decision. The family shall continue receiving services until a decision is reached.

Nothing in this section may be construed as indicating that the department will pay for legal fees for representing the family at a fair hearing pursuant to this section.

**Source:**

**General Authority:** SDCL 27B-2-25, 27B-2-26(6).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(6).

**46:11:12:12. Time and place of hearing -- Time extension.** A fair hearing, pursuant to SDCL 1-26, by an impartial hearing officer shall be held within 90 calendar days after receipt for a request by the participant or the participant's parent or guardian. The impartial hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. The hearing examiner may continue the hearing at the request of any party involved. A request for a continuance must be made at least ten calendar days prior to the date of the hearing.

**Source:**

**General Authority:** SDCL 27B-2-25.

**Law Implemented:** SDCL 27B-2-25.

## **CHAPTER 46:11:13**

## **PREADMISSION SCREENING AND RESIDENT REVIEWS**

## Section

46:11:13:01      **Scope.**

46:11:13:02 Level I screening.

46:11:13:03      Level II review.

46:11:13:04 Director.

46:11:13:05 Timeliness of reviews.

46:11:13:06      Determination of services.

46:11:13:07      Determination of specialized services.

46:11:13:08 Individuals not requiring nursing facility services but requiring specialized services.

46:11:13:09 Specialized services.

46:11:13:10      Length of stay.

46:11:13:11      Data requirements.

46:11:13:12 Determination cannot be countermanded.

46:11:13:13      Residency.

46:11:13:14      Level II exemptions.

46:11:13:15 Exempt hospital discharge.

46:11:13:16      Categorical determinations.

46:11:13:17 Interfacility transfers.

46:11:13:18      New admission and readmission.

**46:11:13:01. Scope.** This chapter applies to any individual with a diagnosis of an intellectual or developmental disability who is applying for nursing facility services or is residing in a nursing



facility. The preadmission screening and continued stay review process must result in determinations made by the director that are based on a physical and mental evaluation of each individual.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:02. Level I screening.** The DSS shall conduct a Level I screening that consists of identifying each individual who is seeking nursing facility services who may have an intellectual or developmental disability.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:03. Level II review.** The DHS shall conduct a Level II review that consists of determining appropriateness of nursing facility services and specialized services for individuals identified in the Level I screening. The Level I screening and the Level II review make up the PASRR or preadmission screening resident review which is the process that is completed when all individuals with an intellectual or developmental disability apply to reside in nursing facilities. Each individual is reviewed for appropriateness of placement, regardless of the source of payment for the nursing facility services. A determination whether or not an individual requires the level of services provided by a nursing facility and whether or not an individual can benefit from specialized services is made. These determinations must be made by the director.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented: SDCL 27B-2-26.**

**46:11:13:04. Director.** The director of the Division of Developmental Disabilities is the state intellectual and developmental disability authority. The director is responsible for both the evaluation and determination functions for individuals with an intellectual or developmental disability.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

**46:11:13:05. Timeliness of reviews.** The director shall make each PASRR Level II determination within seven to nine business days of receipt of the Level I screening and all the information required in § 46:10:04:11.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

General Authority: SDCL 27B-2-26(8).

Law Implemented: SDCL 27B-2-26.

**46:11:13:06. Determination of services.** The director shall determine whether, because of the individual's physical and mental condition, the individual requires the level of services provided by a nursing facility. If the director determines that an individual requires nursing facility services, the nursing facility may admit or retain the individual. If the director determines that an individual does not require nursing facility services, the individual cannot be admitted. Nursing facility services are not a covered Medicaid service for that individual and further screening is not required.

Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority: SDCL 27B-2-26(8).**

**Law Implemented: SDCL 27B-2-26.**

**46:11:13:07. Determination of specialized services.** If the director determines that the individual requires nursing facility services, the director shall also determine whether the individual may benefit from specialized services. If the director determines that an individual requires both nursing facility services and specialized services, the nursing facility may admit or retain the individual and the state shall provide or arrange for the provision of the specialized services needed by the individual in the nursing facility. If the director determines that the individual does not require nursing facility services and may benefit from specialized services, the director shall provide the individual with information regarding service options.

**Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.**

**General Authority: SDCL 27B-2-26(8).**

**Law Implemented: SDCL 27B-2-26.**

**46:11:13:08. Individuals not requiring nursing facility services but requiring specialized services.** For any individual who has continuously resided in a nursing facility at least 30 months before the date of the determination and who requires only specialized services, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Offer the individual the choice of remaining in the nursing facility or of receiving services in an alternative setting;

(2) Inform the individual of the institutional and noninstitutional alternatives covered under the state Medicaid plan;

(3) Clarify the effect on the individual's eligibility for Medicaid services under the state plan if the individual chooses to leave the nursing facility, including the effect on readmission to the nursing facility; and

(4) Regardless of the individual's choice, provide for, or arrange for the provision of, specialized services for the intellectual or developmental disability.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:09. Specialized services.** For any individual who requires only specialized services and who has not continuously resided in a nursing facility at least 30 months before the date of the determination, the state shall, in consultation with the individual's family or legal representative and caregivers:

(1) Arrange for the safe and orderly discharge of the individual from the facility;

(2) Prepare and orient the individual for discharge; and

(3) Provide for, or arrange for the provision of, specialized services for the intellectual or developmental disability.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:10. Length of stay.** For the purpose of establishing length of stay in a nursing facility, the 30 months of continuous residence in a nursing facility may include temporary absences for hospitalization or therapeutic leave and may consist of consecutive residences in more than one nursing facility.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26

**46:11:13:11. Data requirements.** For determining if nursing facility services and specialized services are required, at a minimum, the data used must include:

(1) A comprehensive social and developmental history and physical, including:

(a) Medical history;

(b) Review of body systems;

(c) Evaluation of the individual's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and

(d) In case of abnormal findings which are the basis for a nursing facility placement, additional evaluations conducted by appropriate specialists;

(2) A comprehensive medication history including current or immediate past use of medications that could mask symptoms or mimic mental illness;

(3) A psychosocial evaluation of the individual, including current living arrangements and medical and support systems;

(4) A comprehensive psychiatric or psychological evaluation including a complete psychiatric and developmental history; evaluation of intellectual functioning, memory functioning, and orientation; description of current attitudes and overt behaviors; affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations;

(5) A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities. This

assessment must conclude whether this level of support can be provided to the individual in an alternative community setting or if a nursing facility placement is warranted.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:12. Determination cannot be countermanded.** A PASRR determination made by the director may not be countermanded by the DSS. The director shall issue a written letter for any determination of a Level II review. The letter shall include the name of each professional who performed an evaluation used to make the determination, the date on which each portion of the evaluation was administered, and any other information used to make the determination. A copy of this letter shall be sent to the individual, family, guardian, nursing facility, or any other party affected by the determination. The individual may appeal this determination within 30 calendar days of receipt of the letter according to SDCL chapter 1-26. The individual must make a written request to the DSS. Upon request the individual will be provided with information in an accessible format. Any costs associated with legal counsel obtained by the individual are not the responsibility of the DHS or DSS.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:13. Residency.** The director of the state where the individual is a state resident or would be a state resident at the time Medicaid eligibility is obtained shall make the required PASRR determination.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented: SDCL 27B-2-26.**

**46:11:13:14. Level II exemptions.** An individual is exempt from a PASRR Level II review if at least one of the following occurs:

- (1) The diagnosis of intellectual or developmental disability is unsubstantiated;
- (2) An individual is readmitted to a nursing facility from a hospital to which the individual was transferred for the purpose of receiving care;
- (3) An individual is transferred from one nursing facility to another and a PASRR has previously been completed;
- (4) The physician identifies the need for rehabilitation following hospitalization for a duration of less than 30 calendar days;
- (5) The individual has a diagnosis of situational depression that is of short duration and in direct relation to an occurrence in an individual's life and does not appear to be a chronic disability;
- (6) The individual is admitted to a swing bed.

The DSS shall complete a PASRR 5 form to notify appropriate parties of the determination of the exemption.

**Source: 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.**

**General Authority: SDCL 27B-2-26(8).**

**Law Implemented: SDCL 27B-2-26.**

**46:11:13:15. Exempt hospital discharge.** An individual is exempt from a PASRR following a hospital discharge if the following conditions are met:

- (1) The individual is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital;

(2) The individual requires nursing facility services for the condition that care was received in the hospital; and

(3) The individual's attending physician has certified before admission to the nursing facility that the individual is likely to require less than 30 calendar days of nursing facility services.

If an individual enters a nursing facility as an exempt hospital discharge and is later found to require more than 30 calendar days of nursing care, the director shall conduct a continued stay review within 40 calendar days of admission.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:16. Categorical determinations.** The following situations, known as categorical determinations, approved by the director, warrant nursing facility services but do not warrant specialized services:

(1) A terminal illness diagnosis, determined by a physician or hospice involvement that includes a life expectancy of six months or less;

(2) A severe physical illness which has resulted in a coma or ventilator dependence;

(3) A diagnosis of dementia, including Alzheimer's disease, in an individual at least 65 years old;

(4) The age of an individual is 75 years or older.

For any of these situations, the DSS shall complete a PASRR 5 form. A copy of the form shall be sent to the DHS and the appropriate nursing facility.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.



**46:11:13:17. Interfacility transfers.** An interfacility transfer occurs when the individual is transferred from one nursing facility to another, with or without an intervening hospital stay. Interfacility transfers are not subject to a preadmission screening. If an individual transfers from a nursing facility to a hospital or to another nursing facility, the transferring nursing facility is responsible for ensuring that copies of the individual's preadmission screening review findings accompany the individual.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.

**46:11:13:18. New admission and readmission.** A new admission occurs when an individual is admitted to any nursing facility for the first time or does not qualify as a readmission. With the exception of certain hospital discharges described in § 46:10:04:15, new admissions are subject to a preadmission screening. A readmission occurs when an individual is admitted for the second time to any nursing facility from a hospital. A readmission is not subject to a preadmission screening.

**Source:** 26 SDR 96, effective January 24, 2000; 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(8).

**Law Implemented:** SDCL 27B-2-26.